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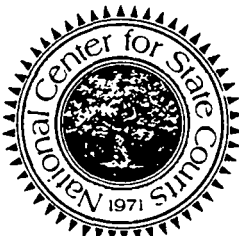
North Central Regional Office

MODEL
TRIBAL COURT

Minneapolis, Minnesota

December 15-17, 1982

NATIONAL CENTER FOR STATE COURTS
North Central Regional Office
COURT HILL
725 Osgood Street
No. Andover, Mass. 01845



National Center for State Courts
Suite 2601
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5th & Minnesota Streets
St. Paul, Minnesota 55101

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the MODEL TRIBAL COURT

The BIA has for the last two years been funding a number of model tribal court improvement projects with the National Center for State Courts. These projects resulted in major improvements in tribal court operations, including standards and guidelines that can be used by other tribal governments and courts. This program presents those developments.

MAJOR DISCUSSION TOPICS

- The function and role of the judge and court administrator in managing a tribal court.
- The collection, organization and presentation of court statistics and management information.
- How to establish and maintain an up-to-date tribal code.
- The use of a shared court system for groups of tribes.
- How a court budget should be prepared and presented.
- What new information the BIA will be requiring of tribal governments and courts.
- Areas of mutual interest between state and tribal courts.
- Court libraries and legal research.
- How to develop a jury system, court manual, and court fund accounting system.

PROGRAM FORMAT

Participants will be provided with an extensive resource binder containing standards, guidelines, and forms developed for tribal courts. The program will be presented in an informal workshop setting, with time for participants to ask questions about their local problems and needs.

WHO SHOULD ATTEND

- Tribal government members
- Tribal attorneys
- Judges
- Court clerks and staff
- BIA staff
- and others interested in improving tribal courts

CALL

- Hotel Reservation (612/339-9311)
- Conference Registration (612/222-6331)

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• Alphabetical order.

1.

MANAGING THE COURT

NCSC/ICM JUDICIAL MANAGEMENT SEMINAR
MARCH, 1982

LEADERSHIP/MANAGEMENT STYLE QUESTIONNAIRE
FOR CHIEF JUDGES

This questionnaire has been designed in order to help you evaluate your leadership or management style. It is not a test. There are no "right" or "wrong" answers. Please read each of the questions and then circle the letter in front of the response you choose (a, b, c, d, or e). (Choose the response to each question that best describes how you usually behave. More than one of the responses may describe your behavior, but choose the one that best describes how you usually behave. If a question refers to a situation that you have not yet faced, choose the one answer that best describes how you would behave.) Please note that references to the court administrator in many of these questions refer to the highest ranking, non-judicial manager in your court, whatever his/her title. If you have no questions, you may begin.

Note: The format for this questionnaire was adopted from one developed by John F. Sullivan and Gilbert H. Skinner, Michigan State University. Helpful input was received from John Hudzik, School of Criminal Justice, Michigan State University, Terry Nafisi, Michigan Judicial Institute, and especially Francis L. Bremson, National Center for State Courts.

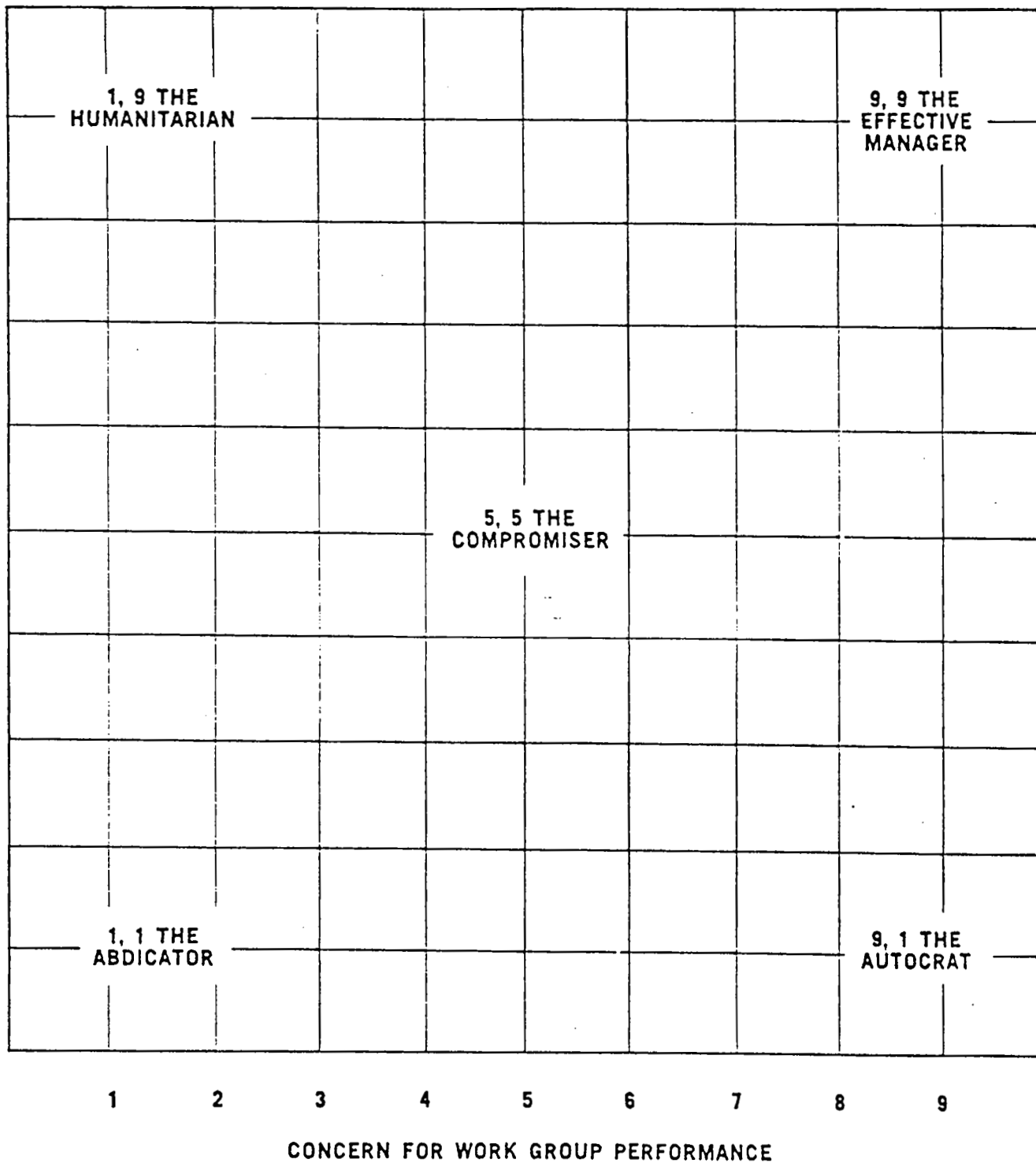
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1. With regard to assigning major administrative responsibilities in my court to my judicial colleagues and myself, I:
 - (a) Assign the administrative responsibilities myself and so inform the other judges.
 - (b) Let each of my colleagues choose his or her own administrative assignments.
 - (c) Do not assign any administrative responsibilities.
 - (d) Get my colleagues input and try to strike a balance between their personal interests and what I believe is best for the court.
 - (e) Work with my colleagues and search for ways that we can satisfy their interests while doing what is best for the court.
2. When it comes to the performance level I expect from my court administrator, I:
 - (a) Have no particular set expectations. The court administrator's job is not amenable to the setting of standards.
 - (b) Expect a reasonable level of performance, one that makes sense both to my fellow judges and to the court administrator.
 - (c) Expect quite a high level of performance, since otherwise he/she would not perform up to his/her full capabilities.
 - (d) Expect a high level of performance, that is viewed as realistic yet challenging by both the court administrator and my fellow judges.
 - (e) Expect that level of performance which will assure that my court administrator is happy on the job.
3. When delegating assignments to my court administrator:
 - (a) I delegate little decision-making authority, but I clearly hold him/her responsible for assigned tasks.
 - (b) I delegate as much decision-making authority to my court administrator as I can considering the needs of the court as well as his/her needs and abilities.
 - (c) I delegate conservatively, trying to minimize the likelihood of failure for myself and my court administrator.
 - (d) I delegate as many assignments and as much authority and responsibility to my court administrator as I can.
 - (e) I delegate administrative assignments primarily according to what I perceive to be of interest to my court administrator.
4. When selecting a court administrator, I primarily look for someone:
 - (a) Who will be aggressive in helping us achieve court objectives, and in enhancing job satisfaction for court employees.
 - (b) Who appears to have the ability to achieve court objectives while working smoothly with court employees and other judges.
 - (c) Who will not "rock the boat," i.e. won't cause political problems for the court.
 - (d) Who seems to be particularly sensitive to the needs of court employees.
 - (e) Who seems to be primarily committed to improvement of court staff performance.

5. With regard to authorizing funds and/or time for the training and development of court staff who report to me (assuming that funds are available), I:
 - (a) Support such activities to the fullest extent possible. If my subordinates feel that they can benefit from the training, then I approve it.
 - (b) Readily support that which leads to the acquisition of immediately-useful skills. Other types of training I approve only if my people really insist on it.
 - (c) Approve almost all requests for training as long as there are sufficient funds in the budget.
 - (d) Approve requests for both their short-term and long-term development, provided requests are justified as wise investments of both personnel time and the court's money.
 - (e) Support that which leads to the acquisition of immediately-useful skills. I refuse to release my employees' time and/or the court's funds for the more general programs.
6. When I issue orders and directives to my court administrator and other non-judicial subordinates, I:
 - (a) Expect them to respect my position and obey the orders with little question.
 - (b) Do so reluctantly and try to accommodate their needs and feelings as much as possible.
 - (c) Relay to them the orders given to me by the funding jurisdiction, Supreme Court, or State Court Administrative Office, or that are decided by my fellow judges.
 - (d) Frequently try to "sell" the orders by explaining the reasons for them.
 - (e) Infrequently issue orders and directives and expect the court administrator and other subordinates to direct their own efforts toward goals or standards that we have agreed upon.
7. In evaluating and discussing with my court administrator his/her performance:
 - (a) I try to evaluate performance closely and precisely. I promptly tell the court administrator when his/her performance does not meet my standards.
 - (b) I seldom evaluate and discuss negative performance as this is destructive. When I do discuss performance, I concentrate on positive aspects.
 - (c) I have little interest in evaluating or discussing with my court administrator his/her performance. I avoid doing so if I can.
 - (d) I try to evaluate performance fairly. I discuss with him/her positive and negative results but try to soften the impact of the latter.
 - (e) I evaluate and expect my court administrator to evaluate him/herself against mutually agreed upon goals or performance standards. I discuss with him/her all relevant information.

8. When one of my judicial colleagues consistently violates a major court rule, statutory provision or a canon of judicial ethics, I usually:
 - (a) Give him/her the benefit of the doubt, but I do complain to the appropriate judicial authority if guilt is clear and known to others.
 - (b) Counsel him/her on a personal and informal basis and try at all costs to protect him/her from any kind of formal disciplinary actions.
 - (c) I avoid taking any actions. However, if the problem is a major one, I meet with the judge and my other judicial colleagues to attempt to use group pressure to get compliance.
 - (d) Move in promptly and direct the judge to change, or suffer the consequences.
 - (e) I gauge my response to the seriousness of the matter. If necessary, I will report the incident to the appropriate judicial authority.
9. When my judicial colleagues have differing points of view about actions that the bench should take, I:
 - (a) Search for a fair compromise between persons with conflicting points-of-view.
 - (b) Point out that conflict is destructive and generally decide the issue in question myself.
 - (c) Try to get the reasons for the conflict out on the table and resolved while working toward the best decision.
 - (d) Close off discussion and let the matter drop or else make the decision myself.
 - (e) Try to smooth over the conflict so that no one's feelings are hurt.
10. When I communicate with my court administrator, I:
 - (a) Do so only when absolutely necessary and only on work-related matters.
 - (b) Prefer to do so in a personal and informal way and we generally talk about each other's feelings, interests, and the like.
 - (c) Do so in a formal way (preferably in writing) and on work-related matters only.
 - (d) Do so as necessary both formally and informally and on personal as well as work-related matters.
 - (e) Encourage the need for active, open, and honest communication about anything that might affect his/her attitude and/or performance or the performance of the court.

THE MANAGERIAL GRID



SOURCE: Adapted from The Managerial Grid, by R. R. Blake and J. S. Mouton, 1964.

LEADERSHIP/MANAGEMENT STYLE PROFILE
FOR CHIEF JUDGES

When Performing The Following Management Functions:	Your Leadership Management Style Tends To Be:					Concern For Work Group
						Perf., Members
Q1. Assigning adminis- trative responsibilities	a	b	c	d	e	,
Q2. Setting performance standards	c	e	a	b	d	,
Q3. Delegating assignments	a	e	d	c	b	,
Q4. Selecting a court administrator	e	d	c	b	a	,
Q5. Training and development	e	a	c	b	d	,
Q6. Issuing orders and directives	a	b	c	d	e	,
Q7. Appraising court administrator's performance	a	b	c	d	e	,
Q8. Taking disciplin- ary actions	d	b	c	a	e	,
Q9. Resolving conflict	b	e	d	a	c	,
Q10. Communicating with court administrator	c	b	a	d	e	,

Personnel Management Program Service
School of Labor and Industrial Relations
MICHIGAN STATE UNIVERSITY

TOTALS _____
AVERAGE _____

MANAGEMENT FUNCTIONS	LEADERSHIP/MANAGEMENT STYLE				
	THE AUTOCRAT	THE HUMANITARIAN	THE ABDICATOR	THE COMPROMISER	THE EFFECTIVE MANAGER
1. PLANNING a. Participation by subordinates in goal-setting	Sets work group goals unilaterally. Virtually no participation by subordinates in the setting of work group and individual goals.	Solicits and almost always accepts subordinates' ideas regarding work group and unit goals.	Rarely solicits the ideas of subordinates for goal-setting purposes. Work group goals generally established by superiors.	Solicits and attempts "to the extent possible" to act on subordinates' ideas in goal setting.	Works with subordinates in the establishment of individual and work group goals.
	Sets goals which are demanding and high.	Sets goals which are generally low and at the highest levels likely to be easily accepted by subordinates.	Leads work group members toward goals which are generally low and at the minimal levels likely to be acceptable to higher management.	Sets goals at intermediate levels and at levels which generally gain the approval and acceptance of higher management and which are acceptable to subordinates.	Sets goals which are viewed as realistic but challenging by subordinates and higher management.
2. ORGANIZING a. Emphasis on organizational and/or subordinates' needs.	Organizes work based on the organization's needs only. Subordinates' needs and interests almost never considered.	Organizes work based principally on subordinates' needs and interests.	Attempts to organize work by identifying course of least resistance.	Attempts to balance needs of subordinates and the organization. Sees these as being inherently in conflict.	Organizes the work so as to maximally achieve the needs of the organization and the individuals.
b. Delegation of authority and responsibility.	Delegates as little authority as possible. However, responsibility is often clearly fixed.	Delegates authority and responsibility based primarily on subordinates' willingness to accept same.	Delegates as much as possible to subordinates and other work groups.	Delegates authority and responsibility in a conservative manner. Attempts to minimize the likelihood of failure for self and subordinates.	Delegates as much as possible based on the needs of the organization as well as the needs and the abilities of subordinates.
3. STAFFING a. Selection and retention of subordinates.	Selects and retains subordinates based on their ability to accomplish work group goals.	Selects and retains subordinates based on their ability to be accepted by and work smoothly with other work group members.	Looks for subordinates who will "not rock the boat" — not cause problems or draw attention to the work group.	Selects and retains subordinates who can meet work group goals while working smoothly with other group members.	Selects and retains subordinates who are able to work synergistically with other work group members and accomplish work group goals.

MANAGEMENT FUNCTIONS	LEADERSHIP/MANAGEMENT STYLE				
	THE AUTOCRAT	THE HUMANITARIAN	THE ABDICATOR	THE COMPROMISER	THE EFFECTIVE MANAGER
CONTINUOUS FUNCTIONS	Makes decisions unilaterally. Asks subordinates to forward relevant information. Seldom works with subordinates as a group or team.	Attempts to have subordinates participate extensively in the making of decisions that affect them. Is constantly working with subordinates as individuals and as a group.	Rarely solicits the input of subordinates. Seldom works with subordinates (either as individuals or as a group) in problem solving and decision-making. Allows decisions that impact the group to be made unilaterally by superiors and/or subordinates.	Frequently solicits and attempts "to the extent possible" to utilize subordinates' inputs in making decisions. Tends to work with subordinates as individuals rather than as a group.	Ensures that subordinates participate extensively in decisions that affect them. Strives for consensus decisions. Makes decisions alone, with individuals, or with groups as appropriate.
a. Participation of subordinates in decisions that affect them.					
b. Resolution of conflict	Suppresses conflict. Forces own decisions on subordinates.	Smooths over conflict. Does not attempt to identify and resolve sources of conflict.	Avoids conflict situations. Withdraws and postpones making decisions where conflicting points-of-view are involved.	Searches for a compromise between persons with conflicting points-of-view. Is willing to trade-off quality and acceptance. Does not attempt to identify and resolve sources of conflict.	Confronts conflict. Tries to get most things "out on the table." Attempts to identify and resolve sources of conflict. Decisions worked through and "hammered out."
c. Emphasis on quality vs acceptance.	Strives for high quality decisions that will improve the work groups' performance. Acceptance is secondary to the quality of the decision.	Strives for decisions that are acceptable to subordinates. The quality of the decision is secondary to the acceptance.	Avoids making decisions. Will "trade off" quality and/or acceptance to maintain the low profile of the work group.	Sound and acceptable decisions are sought by balancing the needs of the organization with the needs of subordinates. Quality decisions are compromised to gain acceptance.	Strives for high quality decisions that will improve work group performance. Subordinates' acceptance is gained because of their participation and the quality of the decision.
2. COMMUNICATING	Frequently communicates to subordinates following established lines of authority. Displays little interest in communication from subordinates.	Communicates extensively with subordinates on personal matters. However, there is very little work-related communication.	Communicates as little as possible with subordinates or others.	Communicates frequently with subordinates on work-related matters. Communicates with them on personal matters to the extent necessary to satisfy them.	Communicates extensively with subordinates in order to solve problems and to integrate their needs with needs of the organization.
a. Direction and flow					
b. Content and formal vs informal	Communicates with subordinates on work-related matters only. Prefers written impersonal and formal communications.	Communicates with subordinates regarding their interests, feelings, and attitudes. Prefers to communicate on a personal, informal basis.	Communicates on work-related matters only. Communications are virtually always formal and impersonal.	Communicates with subordinates about personal and work-related matters. Communications are both formal and informal.	Communicates with subordinates about personal and work-related matters. Emphasizes the need for honest and open communication. Communications are both formal and informal.

MANAGEMENT CHECKLIST
FOR
CHIEF JUDGES

I. GENERAL MANAGEMENT

1. Goals and Objectives

- a. Have you established multi-year goals for the court?
- b. Have you established goals for the court this year, consistent with statewide and/or regional goals?
- c. Have you established specific objectives for this year?
- d. Have your objectives been quantified?
- e. Have these objectives been communicated to and agreed upon by other judges and staff?
- f. Have you established reporting formats, times and procedures to measure relative success?
- g. Are all key actors aware of periodic meetings (individual and collegial) and/or reports to review progress toward achievement of objectives?

2. Have you assigned responsibility to judges, staff or other agencies for the performance of the court's judicial and administrative functions?

- a. Does your assignment of responsibility include establishment of authority of such individuals or agencies to perform such functions?
- b. Have you established a table of organization reflecting lines of administrative authority (direct and indirect, formal and informal)?
- c. Have all key actors agreed to such delineation of authority (judges, court administrator, clerks, probation, sheriff, bar association, etc.)?
- d. Have the responsibilities of each agency and individual for the performance of such functions been clearly defined?

- e. Have performance standards been established for each agency for the performance of such functions?
- f. Has each agency or individual established performance standards and/or procedures for support staff within the agency?
- g. Have you established criteria for performance evaluation, as well as procedures, formats, reporting times, and a process for review?
- h. Have you established procedures for holding individuals and agencies accountable for system performance?

II. DUTIES AND POWERS OF THE CHIEF JUDGE UNDER THE CHIEF JUDGE RULE

- 1. Have the names of presiding judges of divisions been filed with the State Court Administrative Office?
 - a. Has the scope of presiding judge responsibility and authority been defined in writing?
- 2. Do all judges of the court meet to discuss administrative matters on a regular basis?
- 3. Have committees been appointed and assigned responsibility for consideration of administrative matters within the court?
 - a. Have the duties of such committees been defined in writing?
- 4. Has the court established policies and procedures for consideration of matters relating to internal operations and external relations and for the promulgation of orders and rules relating thereto?
- 5. Has the responsibility for external (bench, bar, government and public) liaison been delegated to judges, staff?
 - a. Are the terms of such delegation clearly defined and understood?

6. Does the chief judge routinely review the performance of other judges and senior staff (at least twice a year)?
 - a. Have procedures been established for reporting to the state court administrator the failure of a judge to dispose of assigned judicial work or failure to comply with an order or directive of the chief judge?
7. Has the court established workload measurement standards and a system to facilitate equitable assignment of judges and staff?
8. Personnel Management

Has responsibility and authority for court personnel management been delegated to other judges and/or senior administrative staff?

 - a. Have such duties been defined in writing?
9. Have guidelines been established for supervision of judges personal secretaries and law clerks?
 - a. Has responsibility for some aspects of supervision of such individuals been delegated to administrative staff?
10. Has the court promulgated guidelines/rules for judges and staff regarding:
 - a. Court hours?
 - b. Vacation leave?
 - c. Holiday leave?
 - d. Attendance at educational or professional seminars or conferences?
 - e. Administrative leave?
11. Are all judges and staff familiar with the court's leave policies and procedures, including sanctions for failure to comply with leave rules or guidelines.

12. Does the chief judge maintain a record of judicial absences?

13. Financial Management

Has responsibility and authority for court financial management been delegated to other judges and/or senior administrative staff?

a. Have such duties been defined in writing?

14. Caseflow Management

Has a procedure been established for requesting assignments of visiting judges?

15. Are cases assigned by lot?

a. If not, has court promulgated a local case assignment order?

b. Is the local case assignment order updated or revised annually?

c. Has the court determined if cases are to be assigned at time of filing or at time of hearing?

16. Has a policy been established regarding the number of cases to be assigned and/or the percentage of chief judge time available for judicial vs. administrative duties?

17. Reassignment

a. Was reassignment by lot?

b. Was a written order entered noting the reasons for re-assignment?

c. Was the order filed with the clerk?

d. Were counsel notified of reassignment?

18. Actions arising out of the same transaction

a. Does the caseflow management information system identify multiple cases arising out of the same occurrence (926.4a) and civil actions filed in matters previously dismissed (926.4b), in order to assure that all such matters are referred to the same judge?

b. Is the local bar aware of its obligation to notify the court of such multiple causes under 926.4 (a-b)?

c. Does the court routinely take disciplinary action against attorneys who fail to comply with the notice provisions of 926.4 (c)?

MENOMINEE TRIBAL JUDICIARY

CHIEF JUSTICE

GENERAL DESCRIPTION OF POSITION

The incumbent is appointed by the Menominee Tribal Legislature for a four (4) year term. The Chief Justice has final responsibility for the administration of the Menominee Tribal Judiciary and supervision of court staff. He/she generally hears appeals from the Menominee Tribal Court and as required hears cases in the Tribal Court.

EXAMPLES OF DUTIES

- Administers the operation of the Tribal Judiciary including the assignment of cases and the management of the Court's calendar and business.
- Hears all appeals from the Tribal Court (except those cases heard by the Chief Justice in the lower court).
- Directs the preparation of reports on court activities including requests for needed funds and resources for the Judiciary.
- Supervises Associate Justices, Tribal Court Judges, the Clerk of Court and other support staff.
- Hears cases in the Tribal Court when the assigned judge has a conflict of interest.
- Issues or directs issuance of court documents, subpoenas, warrants, summons, writs, judgments, decrees, and other legal documents relating to the Courts.
- May perform wedding ceremonies.
- Coordinates relationships and contacts with Federal, state, county and local authorities on court related matters.
- In the absence of the court clerk, may perform the clerk's duties and may receive cash bail or bonds whenever a clerk or other authorized person is not available.

The above statements are intended to describe the general nature and level of work to be performed by the person appointed to this position. They are not an exhaustive list of all job duties performed.

DISTINGUISHING CHARACTERISTICS

1. Knowledge Required By The Position:

- Knowledge of criminal law, and the tribal constitution, codes and ordinances, rules, precedents, and relationships affecting jurisdiction on criminal and civil cases in Indian territory.
- Knowledge of tribal customs, traditions, constitution and ordinances to be able to protect the sovereignty and customs of the tribe and protect the rights of the people.
- Ability to communicate with and gain confidence of Federal, state and tribal officials to carry out judicial program needs.
- Ability to recognize sensitive and complex issues relating to court cases and handle them effectively.
- Ability to organize, develop and staff a comprehensive judicial program using good judgment.
- Ability to display a high level of judgment and proficiency relating to court cases.

2. Supervisory Control:

Incumbent has independent authority, judgment and decision on matters relative to court cases and the administration of the tribal judiciary.

3. Guidelines:

Guidelines will be the Menominee Indian Tribe Constitution, code or ordinances, policies, all applicable Federal laws, rules of evidence, and rights of the alleged offender or party including Federal, State and local court decisions affecting the Indian people in Indian territory; and the Code of Judicial Conduct as adopted by the American Bar Association.

4. Complexity:

Work involves independent judgment of court cases, some of which are difficult and sensitive. Incumbent exercises considerable discretion and/or relies on own knowledge of the law in resolving judicial issues and is required to render a judgment in accordance with existing laws.

5. Scope and Effect:

Effective administration of justice on the Menominee Indian Tribe Reservation of Wisconsin has a significant impact on every aspect of life on the reservation. The incumbent's work can result in the safety and security of the community as well as assuring the people of fair and equal treatment.

6. Personal Contact:

Personal contacts are with other justices, judges, court staff, personnel of the Federal, State, local and tribal offices and organizations, as well as with parties, witnesses, jurors and the general public.

7. Purpose of Contact:

Purpose of contact will be for conducting hearings, court, judicial program matters and daily operation of the Tribal Judiciary.

8. Physical Demands:

Incumbent will be required to sit in a courtroom or office, at times for long periods of time, occasionally walking or bending.

9. Work Enviroment:

Work is performed indoors in a courtroom and office setting.

QUALIFICATIONS

The candidate must be at least 35 years of age, an enrolled Menominee Tribal Member, a resident for at least one (1) year of the Menominee Reservation, a high school graduate, never convicted of a felony, or a misdemeanor (within a year prior to appointment) and must demonstrate fitness and competency for the appointment including familiarity with the Tribal Constitution, Code and Judiciary.

The qualifications listed above are guidelines. Alternative qualifications may be substituted if sufficient to perform the duties.

MENOMINEE TRIBAL JUDICIARY
COURT ADMINISTRATOR/CLERK

GENERAL DESCRIPTION OF POSITION

The Court Administrator is appointed by the Supreme Court and under the general direction of the Chief Justice assists in planning, developing, and implementing judicial policies designed to improve the efficiency and effectiveness of court operations. The administrator is also responsible for the management of the court's daily administrative operations including directing and coordinating staff tasks and assignments.

Performance of these duties requires the establishment and maintenance of modern business and professional practices in managing such judicial administration areas as personnel, fiscal, caseflow, juror utilization, facilities, records, statistics and data processing, and necessary research and planning to achieve the goals and objectives of the Tribal Judiciary. Additional duties may include representation of the judiciary with Tribal Legislature, advocacy and advisory groups, media and the general public. Tasks are performed with a wide latitude for initiative and independent judgment subject to review by the Judiciary through conferences, reports, and observation of results achieved.

EXAMPLE OF DUTIES

Under the authority and general supervision of the Supreme Court, the administrator is responsible for the following functions and tasks:

1. Personnel Management: Supervises the activities of court personnel, develops, implements and administers a personnel system which includes recruitment, orientation, performance evaluation, in-service training, discipline, compensation, fringe benefits, and personnel records; additional duties may be assigned with respect to personnel practices, title structure, job definitions, classifications, appointment, and qualifications.
2. Fiscal Management: Supervises financial management activities including budget preparation, fiscal report preparation, establishment of a uniform system of accounts and vouchers, maintains fiscal records, develops and monitors financial control procedures, and maintains a liaison with tribal fiscal officers.
3. Caseflow and Calendar Management: Analyzes and evaluates pending caseloads, assists in establishing scheduling priorities and time requirements, monitors case scheduling and case assignments, and recommends improvements to reduce case backlogs and delays.
4. Information and Data Processing Management: Supervises the court's record and management information systems including the analysis, evaluation, and implementation of appropriate manual or automated systems to assist the court; collects statistical information needed to manage operations and prepare required or requested reports or presentations.
5. Jury and Witness Management: Works with the Tribal Court to ensure compliance with governing jury trial requirements; makes recommendations for improving the use and comfort of jurors and witnesses consistent with the proper administration of justice.
6. Space and Equipment Management: Plans physical space needs and requirements; and, establishes standards and procedures for purchasing and managing equipment, supplies, and services.

7. Public Information Management: Acts as a reception center and source of information for persons having business with the court; develops public information programs; maintains a file of all complaints received by the Judiciary, and recommends methods for responding to such complaints or inquiries; as directed, acts as a clearinghouse for news releases, publications, and presentations to the media, public, civic groups, and other private or public groups having reasonable interest in the administration of the judiciary.
8. Records and Reports Management: Creation and management of uniform recordkeeping systems and forms; collection and publication of data and reports on pending and completed judicial business and internal functioning of the Tribal Judiciary.
9. Research, Planning, and Advisory Services: Problem identification including proposed changes in codes, regulations and court rules effecting the Judiciary, and recommended administrative changes in forms, procedures, and practices.
10. Liaison and Intergovernmental Relations: Acts as liaison to other governmental agencies such as the prosecutor, police, and the state court system.
11. Administrative Services to the Court: Assists the Judiciary in planning and scheduling meetings of the judges, prepares agendas and materials for such meetings, attends such meetings and maintains appropriate records of proceedings; arranges conferences and seminars for judges; drafts proposed court rules; and, performs such other duties as may be required.

As court clerk, the incumbent is also responsible for the following:

- Prepares dockets or calendar of cases to be called.
- Examines legal documents submitted to court for adherence to law or court procedures, prepares case folders, and posts, files or routes documents.
- Explains protocol or procedures or forms to parties involved in cases.
- Secures information for judges, and contacts witnesses, attorneys, and litigants to obtain information for Court, and instructs parties when to appear in court.

- Administers oath to witnesses, records minutes of court proceedings, and transcribes testimony.
- Records case disposition, court orders, and arrangement for payment of court fees. Collects court fees or fines and records amounts collected.

The above statements are intended to describe the general nature and level of work to be performed by the person appointed to this position. They are not an exhaustive list of all job duties performed.

DISTINGUISHING CHARACTERISTICS

The following items describe the basic characteristics associated with this executive level management position:

1. Supervision Received: Administrative direction is received from the Judiciary in the form of broadly defined organizational objectives and specific judicial operating policies. Performance is evaluated during periodic conferences with the court intended to monitor and assess the general direction of programs, the effects of broad policies, and the overall condition of the court's calendar.
2. Supervision Exercised: The court administrator exercises supervision through the general administrative direction of staff; by reviewing a wide variety of periodic and special reports, including statistical summaries and budgets, and by periodic conferences with the court to review the status of on-going court operations and the progress of special projects.
3. Consequence of Error: The court administrator is the highest ranking non-judicial officer in the court and errors typically involve the exercise of professional and personal judgment; the development, implementation, and interpretation of administrative policies; or the implementation and interpretation of judicial policies. Hence, errors are likely to remain undetected beyond the point of economical or inconsequential remedy, and could reflect adversely on public perceptions of the judiciary.

4. Judgment/Discretion: The frequent exercise of a high degree of professional and personal judgment and discretion is a fundamental characteristic of this position.
5. Public Contact: The court administrator may represent the judiciary in a wide variety of highly responsible contacts with tribal officials, and serve as the court's liaison with advisory and advocacy groups, and with the general public.
6. Procedural Knowledge: The court administrator is expected to possess a comprehensive knowledge of federal statutes, tribal codes, and rules related to the administration and operation of the court; a broad professional knowledge of the principles and practices of court administration; and considerable knowledge of the principles and practices of fiscal, personnel, records, and data management.
7. Fiscal Responsibility: The administrator is responsible for preparing, defending, monitoring, and revising the judicial budget; and for developing and implementing policies and procedures for the internal control and security of important documents and trial exhibits.
8. Specialized Skills and Abilities: The court administrator must have exceptional technical skills in administering a full range of court administration activities including calendaring, planning, budgeting, personnel, records, statistics, data processing, public relations, juror utilization, and facilities. The administrator must also possess executive and management skills in organizational problem identification, coordinating staff efforts, conflict resolution, communication, and integrating various purposes, values, and resources within the court and its environment.

As court clerk, the incumbent will also need knowledge, skills, and abilities in the following areas:

1. Clerical, filing, and typing;
2. Operation of various office machines used in the courtroom, including transcribing from tape recordings;
3. Shorthand methods; and
4. Regulations contained in the tribal code relating to court proceedings and documents.

QUALIFICATIONS

1. Education: Bachelor's Degree in Public or Business Administration with preference for graduate degree in Judicial Administration, Law, Public Administration, or Business Administration
2. Experience: Three (3) years of high level professional, management and supervisory experience in a trial court system sufficient to perform the assigned duties. Additional credit may be given for experience in other high level management positions or training.
3. Other: Enrolled Menominee Tribal Member and resident of the Reservation.

The qualifications listed above are guidelines. Alternative qualifications may be substituted if sufficient to perform the duties.

CODE OF PROFESSIONAL STANDARDS
FOR COURT ADMINISTRATORS AND MANAGERS OF JUDICIAL SYSTEMS

Standard I

Promote the growth and development of professional court administration by seeking to improve personal management skills and by supporting research and development in the field.

Standard II

Support professional court administration organizations by membership and by active participation in their activities.

Standard III

Promote professionalism within the court system and avoid participation in any activity that would reflect adversely upon the judges or the court.

Standard IV

Discharge the duties of the office in a timely, impartial, and courteous manner, and be aware of the court administrator's responsibility as a public official and as a servant of the people.

Standard V

Refrain from participation in the election of the members of his or her employing body, and from all partisan political activities that would impair his or her performance as a professional administrator.

Standard VI

Refrain from using the position of court administrator to influence improperly the decision of a judge or the court in any individual case.

Standard VII

Put aside any and all personal considerations in the conduct of service to the court.

Standard VIII

Be mindful that a court administrator is responsible to the judges served and that the role of the court administrator is to assist in the administration of justice rather than to set policy.

Standard IX

Honor the confidential relationship of the position and do not use it for improper purposes of any respect.

LEADERSHIP/MANAGEMENT STYLE QUESTIONNAIRE
FOR CHIEF JUDGES

This questionnaire has been designed in order to help you evaluate your leadership or management style. It is not a test. There are no "right" or "wrong" answers. Simply read each of the questions and then circle the letter in front of the response you choose (a, b, c, d, or e) next to the question number on the answer sheet. Choose the response to each question that best describes how you usually behave. More than one of the responses may describe your behavior, but choose the one that best describes how you usually behave. Do not write on this questionnaire. Write your responses only on the answer sheet provided. Please note that references to the court administrator in many of these questions refer to the highest ranking, non-judicial manager in your court, whatever his/her title. If you have no questions, you may begin.

Note: The format for this questionnaire was adopted from one developed by John F. Sullivan and Gilbert H. Skinner, Michigan State University. Helpful input was received from John Hudzik, School of Criminal Justice, Michigan State University, Terry Nafisi, Michigan Judicial Institute, and Francis L. Bremson, National Center for State Courts.

(C) Theodore H. Curry II, School of Labor and Industrial Relations,
Michigan State University

PRESIDING JUDGES' ROLE PERCEPTIONS OF TRIAL COURT ADMINISTRATORS*

BURTON W. BUTLER**

INTRODUCTION

One of the key factors in the development of the new court administration profession at the trial court level is likely to be the attitudes and perceptions of the judiciary, especially that of the presiding judge. A trial court administrator usually serves as an appointee of the entire court, but he is almost universally subject to the supervision and direction of the presiding or chief judge. In addition, many of the functions performed by a trial court administrator are duties traditionally performed by the presiding judge. Therefore, more than any other judge, the way the presiding or chief judge perceives the role of a trial court administrator could determine to a large extent the actual function of the court administrator in that particular court system.

COMPOSITION OF THE QUESTIONNAIRE

The questionnaire was constructed to measure (1) the degree of favorability a presiding judge exhibits toward the concept of a court administrator; (2) the degree of significance presiding judges attach to each of the ten major functions the literature suggested should be delegated to a court administrator; and (3) the degree of responsibility presiding judges delegate to trial court administrators.

OVERVIEW OF SUMMARY STATISTICS

A very substantial portion (78 percent) of the presiding judges believed that a trained court administrator is a necessity for increasing the efficiency in the administration of justice. Almost the same percentage (79 percent) rejected the argument that the benefits of a trial court administrator do not merit the additional costs. Also, 76 percent of the presiding judges agreed that modern administrative theory and technology is applicable to the courts, and that the imposition of non-judicial administrative work upon the judges is, in fact, a serious problem.

Seventy-four percent of the judges agreed that judges are trained to be judges, not administrators of the non-judicial activities of courts. In addition, 70 percent disagreed with the statement that as long as each judge does his job, the court runs efficiently. Thus, a substantial number of judges readily admitted that an individual other than himself is necessary to administer the non-judicial activities of the court.

The statement which produced the greatest difference in opinion among presiding judges was the question of how much power a court administrator should be delegated. Only 55 percent agreed that a trial court administrator should have broad powers. Twenty-nine percent disagreed while 16 percent were uncertain as to whether a court administrator should have broad powers.

Duties Assigned To A Trial Court Administrator

The overall favorability of presiding judges toward the concept of a court administrator is supported by the willingness of presiding judges to delegate a wide range of duties to trial court administrators. The ten duties presiding judges delegated the least and most frequently are revealed in Tables 3 and 4.

Table 3

*Ten Duties Delegated Most Frequently by Presiding Judges
to Trial Court Administrators*

<i>Most Frequently Delegated Duties</i>	<i>Number of Judges Delegating Duty</i>	<i>Per- centage*</i>
(1) Assist in preparing and planning annual court budget	198	97%
(2) Develop in-service training program for support personnel of court	195	95%
(3) Assign and distribute necessary supplies and equipment for the court	192	94%
(3) Collect and publish judicial statistics	192	94%
(5) Institute modern office and accounting methods	190	93%
(6) Maintain accounting and auditing system	189	92%
(7) Prepare factual reports for court each month	188	92%
(8) Improve coordination between court and other agencies	187	91%
(8) Conduct research into possible new programs and procedures	187	91%
(10) Act as purchasing agent for the court	183	89%
(10) Manage court's record keeping system	183	89%

**Based on 205 judges who responded to questionnaire.*

Table 4

*Ten Duties Delegated Least Frequently by Presiding Judges
to Trial Court Administrators*

<i>Least Frequently Delegated Duties</i>	<i>Number of Judges Delegating Duty</i>	<i>Per- centage*</i>
(1) Evaluate judges' performance and hours of court	43	21%
(2) Develop in-service training programs for judges	57	27%
(3) Supervise the screening and instruction of jurors	96	47%
(4) Represent court in dealing with public	101	49%
(5) Draft legislation for the court	107	52%
(6) Deal with public comment and complaints	110	54%
(7) Assignment of cases to judges under procedures established by the court	114	56%
(8) General supervisory power over the operation of the clerk's office	122	59%
(9) Prepare court's docket of cases to be heard	132	64%
(10) Responsible for personnel selection and placement of non-judicial employees	133	65%

**Based on 205 judges who responded to questionnaire.*

Those duties delegated most frequently were specifically non-judicial in nature, and those delegated least frequently were more judicial in nature or duties that might infringe on judicial independence. The duties in Table 3 include many "housekeeping" functions: budgeting, accounting, purchasing of supplies and equipment, writing reports, and managing the court's record keeping system. These are duties in which legal training and experience are of relatively little importance and where the presiding judge is probably willing to give a court administrator widest scope.

Thus, in their perception of the role of a court administrator, presiding judges differentiate between those duties within a court system which are more directly linked to adjudication and those which are basically administrative in nature. In determining which duties a court administrator should perform, there is a stronger agreement on those duties which are purely administrative.

It appears that presiding judges were also in more agreement over the duties of a court administrator that were of lesser importance or significance to a court system, and disagreed more over the duties which might give a court administrator substantially more power, authority, or prestige. For instance, under personnel management 95 percent of the presiding judges would allow a court administrator to develop in-service training programs for support personnel of the court, but only 27 percent would allow a court administrator to develop in-service programs for judges. Similarly, 97 percent of the presiding judges would allow a court administrator to prepare and plan the annual court budget, but only 81 percent would allow him to justify the court's budget before the funding source; 85 percent believed a court administrator's office should act as a reception center and source of information for persons having business with the court, but only 49 percent felt a court administrator should represent the court in dealing with the public; 88 percent would allow a court administrator to improve jury and witness waiting rooms, but only 47 percent would allow a court administrator to supervise the screening and instruction of jurors; and 80 percent would allow a court administrator to evaluate caseloads and calendaring procedures, but only 56 percent believed a court administrator should be responsible for assigning cases to judges.

Nevertheless, it is significant that there were only 4 duties out of 52 that less than 50 percent of the presiding judges would delegate to a court administrator. The median percentage for the 52 duties was an extremely high 85 percent.

Managerial Functions of a Trial Court Administrator

Table 5 depicts how presiding judges rank the ten managerial functions in relation to each other. The first four functions in Table 5 (fiscal, systems analysis, space and equipment, and report management) are, from the presiding judges' point of view, the core areas of responsibility that a court administrator should be assigned. The fiscal, space and equipment, and report functions are the most routinized operational duties in the court system, but the systems analysis function seems to indicate that presiding judges also view the court administrator as the source of new ideas. Ninety-four percent of the judges believed a court administrator should be involved in researching and implementing new programs and procedures for the court. This finding suggests that many judges view the office of court administrator more in terms of a research and development center than a day to day operational office for the courts. This may be one reason calendar management was ranked so low.

There is less agreement regarding the next two functions: liaison activities with other agencies, and jury and witness management. The liaison function indicates that many presiding judges view the role of a court administrator also in terms of the "linking pin" function espoused by Rensis Likert.¹¹ Thus, the court administrator is viewed as the key link or the "middleman" of all activities that involve the courts' cooperation and communication with other components of the justice system and other outside agencies.¹²

Table 5

*Ranking of Ten Managerial Functions of a Trial
Court Administrator by Presiding Judges*

<i>Function</i>	<i>Number of Judges Delegating Function to Court Administrator</i>	<i>Per- centage*</i>
(1) Fiscal management	189	95%
(2) Systems analysis, research, and data processing management	188	94%
(2) Space and equipment management	188	94%
(4) Report management	183	91%
(5) Liaison activities with other agencies	165	83%
(6) Jury and witness management	164	82%
(7) Management of personnel	155	77%
(8) General management of non-judicial activities	153	76%
(9) Public information management	139	69%
(10) Caseload management	136	67%

**Based on 204 presiding judges who completed this section of the questionnaire.*

These responses indicate that presiding judges are undecided as to what the lines of authority between the judge, court clerk, non-judicial personnel and court administrator should be. This is especially evident in the way presiding judges view the relation between the court clerk and court administrator. Most of the presiding judges (88%) felt that a court administrator should provide liaison between the court and office of clerk, but only 59 percent felt a court administrator should have general supervisory power over the operation of the clerk's office. Thus, the classical management model complete with direct lines of authority over non-judicial personnel, especially the clerk's office, does not appear to have as much acceptance among presiding judges as the "linking pin" model.

Of the ten functions listed for a trial court administrator, caseload management was ranked last by presiding judges. Since one of the major complaints against the management of the courts today involves delay in the disposition of cases, it is surprising that judges ranked this function below all the others. Nevertheless, at least 80 percent of the presiding judges would delegate the evaluation of caseloads and calendaring procedures to a trial court administrator, while 77 percent would also allow a trial court administrator to make recommendations and initiate changes in the caseload to reduce backlog and delay. Thus it appeared a substantial percentage of the presiding judges agreed that a court administrator should assist in expediting caseload by conducting studies and recommending changes in the caseload, a research and development function, but there was less agreement on whether the court administrator should assist in the day to day mechanics of docketing, calendaring, and assigning cases to judges.

Perhaps caseload management was ranked low also because specific methods of assigning cases to judges require different involvement of personnel. For instance, in court systems that use the individual calendar system, each judge operates independently in the management of his caseload and disposition of cases. He usually prepares his own calendar and docket of cases to be heard. It is unlikely that the judge would want a court administrator to impinge on the autonomy that an individual calendar system allows. However, if a court system uses a master calendar system, the assignment, calendaring, and docketing of cases is usually coordinated from a central scheduling office. A court administrator is much more likely to become involved in the assignment, calendaring, and docketing of cases by supervising the operation of this scheduling office. Because presiding judges were not asked what type of calendaring system they use in their court system, it was not possible to tell whether the type of calendaring system does in fact affect how a presiding judge views the role of a court administrator in the caseload management function.



2.

MANAGEMENT INFORMATION

(MONTHLY CASELOAD REPORT)

For month _____, 19____

Criminal Traffic Custody/ Juveniles Civil Probate
(Adult) Non- Moving Moving ICWA Rights Adoptions Criminal Truancy Money Paternity (Estates) Total

Trial Court

1. Pending Beginning of Month

2. Filed

3. Reopened Cases

(Sub-total)

4. Dismissal or Withdrawn

5. Guilty Plea Before a Judge

6. Plea Before Clerk

7. Consent or Default Judgment

8. Judge Trial: Guilty

9. Judge Trial: Not Guilty

10. Jury Trial: Guilty

11. Trial: Not Guilty

12. Informal

(Sub-total)

13. Pending End of Month

14. Warrant Before Disp.

15. Active Cases

Appellate Court

16. Pending Beginning of Month

17. Filed

(Sub-total)

18. Affirmed

19. Reversed

(Sub-total)

20. Pending End of Month

Prepared by _____

INSTRUCTIONS FOR COMPLETING
MONTHLY CASELOAD REPORT

Row Definitions

Trial Court

- 1 Pending Beginning of Month. Record number from prior month's "Active Cases" row. (15).
- 2 Filed. Record number of new cases (including cases with outstanding arrest warrants) filed with court during the month in each case type. Do not record here any cases reopened because of the filing of post-judgment proceedings.
- 3 Reopened Case. Record in this row any case where a defendant has been brought before the court after an arrest from an arrest or bench warrant (issued for failure to appear for trial) - do not record here appearances to pay a fine after a bench warrant.
- 4 Dismissed or Withdrawn. Use this row to record dismissals (including no-progress cases) or withdrawals in civil or criminal cases.
- 5 Guilty Plea Before Judge.
- 6 Plea Before Clerk. Any matter disposed of by a forfeiture of a bond or payment of a fine (per a schedule) before a court clerk should be recorded here.
- 7 Consent or Default Judgments. If a party in a civil case admits liability in an answer or fails to respond after being served with a complaint, enter disposition in this row.
- 8-11 Trials or Hearings. Record verdicts of juries or decisions of judge. Rows 8-11 should also be used for civil cases. Ex parte decisions by a judge should be recorded in Row 8.
- 12 Informal. Any disposition arrived at by the parties and recorded with court should be noted here (dismissed or withdrawn complaints should not be recorded here).
- 13 Pending End of Month. This figure is calculated by adding rows 1-3 together and subtracting the total of the "Disposition" rows (4-12).
- 14 Arrest and Bench Warrant Before Disposition. If a person has never appeared before the court or appeared at least once and failed to return for trial, the court has no control over the processing of the case while a warrant is outstanding. New bench warrants issued during the month should be recorded here. At the end of each month record in this row cases filed during the month (with unserved arrest warrants) that continue to be unserved at the end of the month.
- 15 Active Cases. Subtract "Arrest and Bench Warrant Before Disposition" [row (14)] from "Pending End of Month" [row (13)] to determine the number of "active cases" before the court.

Appellate Court

- 16 Pending Beginning of Month. Record number from prior month's "Pending End of Month" row (20).
- 17 Filed. Number of new appeals filed during the month by case type.
- 18-19 Decision. Record each opinion rendered by the court as either "Affirmed" row (18) or "Reversed" row (19) by the case type.
- 20 Pending End of Month. This figure is calculated by adding together row 16 (Pending Beginning of Month) and row 17 (Filed), and subtracting the total of row 18 and 19.

MENOMINEE TRIBAL COURT
MONTHLY WORKLOAD ACTIVITY REPORT

For month of _____, 19__

NUMBER

(1) Counseling

(A) Court Procedures	_____
(B) Domestic Relations	_____
(C) Legal Procedures	_____

(2) Probation Department

(A) Presentence Reports	_____
(B) New Adult Probationers	_____
(C) New Juvenile Probationers	_____
(D) Restitution Payments	_____

(3) Post Judgment Activities

(A) Garnishments	_____
(B) Enforcement of Foreign Judgments	_____
(e.g., child support)	_____

(4) Other Activities

(A) Marriages	_____
(B) Occupational Driver's Licenses	_____
(C) Courtesy Letters (bad checks)	_____
(D) Search Warrants	_____
(E) Paternity (enrollment)	_____

Dated _____

Prepared by _____

(Monthly Summary of Collected Funds)

Month of _____, 198

	Court Funds			Trust	Pass Through Funds		
	Fines	Costs	Fees	Bonds	Support	Restit.	Garnish. Total
1. Previous Month's Balance							
2. Collected							
3. Interest							
4. Distributed							
5. Spent							
6. Refunded							
7. Forfeited							
8. Balance							
Amount Collected Year to Date							

Prepared By _____

MONITORING RECEIPTS JOURNAL

Month	Year
-------	------

RECEIVED FROM				COURT FUND				COURT DISTRIBUTED FUNDS				REMARKS						
Date	Received From	Rec By	Receipt Code	Receipt Number	Case Number	Print Code	Amount Received	1. Filing (105)	2. Costs (105)	3. Fees (402)	4. Other Fees (105)		5. Jury Fees (402)	6. Due to T. Ct. (CR 207)	7. Cash Bond (206)	8. Child Support (201)	9. Restitution (208)	10. Garn. (204)
1																		
2																		
3																		
4																		
5																		
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8																		
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31																		
32																		
T																		

MONITORING TRIBAL COURT

Phone:

Receipt Code

- 1. Filing/Pref.
- 2. Costs
- 3. Filing Fees
- 4. Civil
- 5. Criminal
- 6. Due to T. Courts
- 7. Cash Bond
- 8. Child Support
- 9. Restitution
- 10. Mega Commitments
- 11. Criminal Appeal
- 12. Other Fees
- 13. Jury Fees

Received by:

TOTAL DEPOSIT

ORDER TO PAY OUT COURT DISTRIBUTED FUNDS

The Appointee is hereby authorized and instructed to issue checks for the amounts noted in columns 8, 9 & 10 above to the payees noted on the attached copies of SPECIAL ACCOUNT LEDGER CARDS

Judge

Account Holder/Payor Name	SPECIAL ACCOUNT LEDGER CARD	Court Case Number
Address		Date of Court Action
Phone ()	TYPE OF ACCOUNT <input type="checkbox"/> Support <input type="checkbox"/> Fine <input type="checkbox"/> Restitution <input type="checkbox"/> Garnishment <input type="checkbox"/> Other	DATE ACCOUNT CLOSED
Payee Name	Terms and Conditions	
Address		
Phone ()		

[illegible]

PAYORS ACKNOWLEDGEMENT: I understand the terms and conditions of this special account and pledge to abide by them as ordered by the court under penalty of arrest for violation of Lawful Orders of the Court.

Payor's Signature _____ Date: _____

BOND LEDGER							Year	No
Date	1. Received From (Name & Address)	Rec or Ref By	Receipt Code	1. Receipt No	Case Number	Pymt Code	1. Amount Received	
	2. Court Disposition						2. Amount of Fine or Forf.	
	3. Refund Voucher No.			3. Refund Check No.			3. Amount Refunded	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
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	2.						2.	
	3.			3.			3.	

INSTRUCTIONS

Tribal courts receive operating funds from various sources (e.g., BIA appropriations, BIA-638 contracts, court funds, grants, CETA, etc.). A single court may receive funds from more than one of these sources. Therefore, the only way to properly plan for and monitor the financial needs of a court is to consider all funding sources in a single process. The attached revised Financial Program Plan forms provide the Tribe, Bureau, and court with a set of documents that will allow everyone to plan for and monitor all court expenditures.

I. Budget Preparation

The first set of forms are basically the Bureau's existing Quarterly Report forms with minor revisions:

Form A

This form is identical with the original with the exception that an additional line has been inserted above line 15 for "Indirect" expenses. The form will also be used to record all appropriations and expenditures regardless of source.

FORMS B-E

These forms are also identical with existing forms except for the addition of a "code" column in column 12 of each of the forms, and additional description sheets for all expenditure line items (including "INDIRECT").

When a court is preparing a fiscal year's budget, they should use Forms B-E to list all expenditure items regardless of funding source. The additional "CODE" column in column 19 should be used to note funding sources as follows:

<u>CODE</u>	<u>Description</u>
A	BIA courts
B	638 contracts
C	Court funds
D	Tribal funds
E	Grants
F	CETA
G	Other (list)

FORMS F-K

These forms should be used to summarize the allocation from each of the funding sources. Each form is for a different funding source. The amounts for each line item can be taken from Forms B-E by reference to the funding codes. The totals from a specific line item should be added together (from Forms F-K) and recorded on Form A.

II. Monthly Expenditures

Form L

As the court prepares expenditure vouchers (regardless of the source of funds), an entry should be made on Form L. One form will be prepared for each month in a fiscal year. The

court clerk should record the date of the voucher and the number for each expenditure, and under the "code" column record the funding source alpha code. The remaining columns correspond to columns 9-11 (object group, object class, and description) on Form A. Expenditures from the voucher are to be noted under the appropriate column.

At the end of each month all columns are totalled and appropriate adjustments are made to the "BALANCE" row. This row is then transferred to the next month's "PREVIOUS MONTH'S BALANCE" row.

Form M

Quarterly reports (Forms A, C-K) can be prepared by the Tribe, Bureau, or court by adding up the totals from Form M for a three (3) month period. The "OBLIGATION" columns for the quarterly reports is the total of the amounts in the "SPENT" and "ENCUMBERED" columns on Form M. Form M could also be used for a quarterly summary report.

FUNDING SOURCES

A	B	C	D	E	F	G
---	---	---	---	---	---	---

1. Location _____ 3. Fiscal Year _____ 5. Approved _____
 2. Activity _____ 4. Program Element _____ 6. Date Approved _____ 7. Quarter 1 2 3 4
 8. Revision No. _____

BUREAU OF INDIAN AFFAIRS
 FINANCIAL PROGRAM PLAN
 SUMMARY

9. 10. 11. 12.		QUARTERLY FINANCIAL PROGRAM PLAN				13. TOTAL LINE ITEM BUDGET				14. PROGRAM COST ACCOUNT DISTRIBUTION COMPONENT/WORK ORDER					
DESCRIPTION		1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		Code		Code		Code	
		Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation						
A	GOVT PERSONNEL SERVICES														
B	TRAVEL														
21	Gov't Employee Travel														
22	Non-Gov't. Empl. Travel														
23	CONTRACTUAL SERV.														
41	GRANTS														
OTHER	OTHER QDJ. GROUPS														
22	Transportation of Things														
23	Plants, Comm. & Utilities														
24	Piloting														
26	Supplies/Materials														
31	Equipment														
32	Land and Structures														
33	Investments & Trans.														
INDIRECT															
15. TOTAL FIN. PROGRAM PLAN															
16. Less: Estimated Pay Cost															
17. Less: Quarter Reimbursement															
18. Less: Other Reimbursement															
19. TOTAL ALLOCATION (CY)															
20. VARIANCE (X)															

[illegible]

11. COMPONENT/ WORK ORDER	12. DESCRIPTION	13. TOTAL	14. QUARTERLY FINANCIAL PLAN				15. Not Funded
			1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
	Object Class 25						
	Total 28						
	Object Class 41						
	Total 41						
	Object Class (01/01/01)						
	Total						
	Object Class 25						
	Total 23						
	Object Class 21						
	Total 21						

11. COMPONENT/ WORK ORDER	12. CODE	13. DESCRIPTION	14. QUARTERLY FINANCIAL PLAN				15. Not Funded
			1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
		Object Class 24					
		Total 24					
		Object Class 31					
		Total 31					
		Object Class 32					
		Total 32					
		Object Class 33					
		Total 33					
		Object Class (INDIRECT)					
		Total					
		TOTAL					

1. Location _____ 2. Fiscal Year _____ 3. Approved _____
 4. Activity _____ 5. Program Element _____ 6. Data Approved _____ 7. Quarter 1 2 3 4
 8. Revision No. _____

BUREAU OF INDIAN AFFAIRS
 FINANCIAL PROGRAM PLAN
☐ (A) CONTRACT ☐ (B) CFR

9.		10.	11.	12. QUARTERLY FINANCIAL PROGRAM PLAN						13.	14. PROGRAM COST ACCOUNT DISTRIBUTION COMPONENT/WORK ORDER					
		DESCRIPTION		1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		TOTAL LINE ITEM BUDGET	Code			
				Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation		Code	Code	Code	Code
A	G-192	PERSONNEL SERVICES														
B		TRAVEL														
	21	Gov't. Employee Travel														
	27	Non-Gov't. Empl. Travel														
D	25	CONTRACTUAL SERV.														
F	41	GRANTS														
GRE		OTHER OBJ. GROUPS														
C	22	Transportation of Things														
C	23	Rent, Comm. & Utilities														
C	24	Printing														
C	26	Supplies/Materials														
E	31	Equipment														
E	32	Lands and Structures														
F	33	Investments & Trans.														
		INDIRECT														
15. TOTAL FIN. PROGRAM PLAN																
16. Less: Estimated Pay Cost																
17. Less: Quarter Reimbursement																
18. Less: Other Reimbursement																
19. TOTAL ALLOCATION (CY)																
20. VARIANCE (X)																

1. Location _____ 3. Fiscal Year _____
 2. Activity _____ 4. Program Element _____

BUREAU OF INDIAN AFFAIRS
 FINANCIAL PROGRAM PLAN
 [(C) COURT FUND]

5. Approved _____
 6. Date Approved _____ 7. Quarter 1 2 3 4
 8. Revision No. _____

9. 10. 11.		12. QUARTERLY FINANCIAL PROGRAM PLAN								13. TOTAL LINE ITEM BUDGET				14. PROGRAM COST ACCOUNT DISTRIBUTION COMPONENT WORK ORDER			
DESCRIPTION		1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		TOTAL		PROGRAM COST		ACCOUNT DISTRIBUTION			
		Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation	BUDGET		Code		Code			
A	61-92	PERSONNEL SERVICES															
B		TRAVEL															
	21	Gov't. Employee Travel															
	27	Non-Gov't. Empl. Travel															
D	25	CONTRACTUAL SERV.															
F	41	GRANTS															
ONE		OTHER OBJ. GROUPS															
C	22	Transportation of Things															
C	23	Rent, Comm. & Utilities															
C	24	Printing															
C	26	Supplier/Materials															
E	31	Equipment															
E	32	Land and Structures															
F	33	Investments & Trans.															
		INDIRECT															
15. TOTAL FIN. PROGRAM PLAN																	
16. Less: Estimated Pay Cost																	
17. Less: Quarter Reimbursement																	
18. Less: Other Reimbursement																	
19. TOTAL ALLOCATION (CY)																	
20. VARIANCE (X)																	

1. Location _____ 3. Fiscal Year _____
 2. Activity _____ 4. Program Element _____
 5. Approved _____ 6. Date Approved _____ 7. Quarter 1 2 3 4
 8. Revision No. _____

**BUREAU OF INDIAN AFFAIRS
 FINANCIAL PROGRAM PLAN
 [(D) TRIBAL FUNDS]**

0. Revision No.															
[(D) TRIBAL FUNDS]															
QUARTERLY FINANCIAL PROGRAM PLAN															
11. DESCRIPTION		1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		13. TOTAL LINE ITEM BUDGET		14. PROGRAM COST ACCOUNT DISTRIBUTION COMPONENT/WORK ORDER			
9.	10.	Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation	Code	Code	Code	Code	Code	Code
PERSONNEL SERVICES															
TRAVEL															
Gov't. Employee Travel															
Non-Gov't. Empl. Travel															
CONTRACTUAL SERV.															
GRANTS															
OTHER GOV. GROUPS															
Transportation of Things															
Phone, Comm. & Utilities															
Printing															
Supplier/Materials															
Equipment															
Lease and Structures															
Investments & Trans.															
INDIRECT															
TOTAL FIN. PROGRAM PLAN															
Less: Estimated Pay Cost															
Less: Quarter Reimbursement															
Less: Other Reimbursement															
TOTAL ALLOCATION (CY)															
VARIANCE(%)															

1. Location _____ 3. Fiscal Year _____ 5. Approved _____
 2. Activity _____ 4. Program Element _____ 6. Date Approved _____ 7. Quarter 1 2 3 4
 8. Revision No. _____

BUREAU OF INDIAN AFFAIRS
 FINANCIAL PROGRAM PLAN
 [(E) GRANT]

9.		10.	11.	12. QUARTERLY FINANCIAL PROGRAM PLAN								13.	14. PROGRAM COST ACCOUNT DISTRIBUTION COMPONENT WORK ORDER							
			DESCRIPTION	1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		TOTAL LINE BUDGET	Code		Code		Code		Code	
				Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation									
A	01	02	PERSONNEL SERVICES																	
B	03	03	TRAVEL																	
C	04	04	Gov't. Employee Travel																	
D	05	05	Non-Gov't. Empl. Travel																	
E	06	06	CONTRACTUAL SERV.																	
F	07	07	GRANTS																	
G	08	08	OTHER OBJ. GROUPS																	
H	09	09	Transportation of Things																	
I	10	10	Rents, Comm. & Utilities																	
J	11	11	Printing																	
K	12	12	Supplies/Materials																	
L	13	13	Equipment																	
M	14	14	Land and Structures																	
N	15	15	Investments & Trans.																	
O	16	16	INDIRECT																	
P	17	17	TOTAL FIN. PROGRAM PLAN																	
Q	18	18	Less: Estimated Pay Cost																	
R	19	19	Less: Quarter Reimbursement																	
S	20	20	Less: Other Reimbursement																	
T	21	21	TOTAL ALLOCATION (CY)																	
U	22	22																		
V	23	23																		
W	24	24																		
X	25	25	20. VARIANCE(X)																	

1. Unearns _____ 3. Fiscal Year _____
2. Activity _____ 4. Program Element _____

5. Approval _____

6. Data Approval _____

8. Revision No. _____

FORM J

1. Location _____ 3. Fiscal Year _____
 2. Activity _____ 4. Program Element _____
 BUREAU OF INDIAN AFFAIRS
 FINANCIAL PROGRAM PLAN
 [(G) OTHER]

5. Approved _____
 6. Date Approved _____ 7. Quarter 1 2 3 4
 8. Revision No. _____

11. DESCRIPTION		12. QUARTERLY FINANCIAL PROGRAM PLAN								13. TOTAL LINE ITEM BUDGET				14. PROGRAM COST ACCOUNT DISTRIBUTION COMPONENT/WORK ORDER			
		1st Quarter		2nd Quarter		3rd Quarter		4th Quarter									
		Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation								
A	GA 92 PERSONNEL SERVICES																
B	TRAVEL																
	21 Gov't. Employee Travel																
	27 Non-Gov't. Empl. Travel																
D	25 CONTRACTUAL SERV.																
F	41 GRANTS																
GNE	OTHER OBJ. GROUPS																
C	22 Transportation of Things																
C	23 Plants, Consum. & Utilities																
C	24 Printing																
C	26 Supplies/Materials																
E	31 Equipment																
E	32 Lands and Structures																
F	33 Investments & Trans.																
	INDIRECT																
15. TOTAL FIN. PROGRAM PLAN																	
16. Less: Estimated Pay Cost																	
17. Less: Quarter Reimbursement																	
18. Less: Other Reimbursement																	
19. TOTAL ALLOCATION (CY)																	
20. VARIANCE (X)																	

Trial Court Management Series

Financial Management

by
Robert Tobin

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July 1979

U.S. Department of Justice
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Law Enforcement Assistance Administration
Henry S. Dogin, Administrator
National Institute of Law Enforcement
and Criminal Justice
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III. TRIAL COURT BUDGETING

A. Overview of Trial Court Budgeting

1. Treating trial court budgeting as a comprehensive process. The financial management issues raised by court officials surveyed or interviewed in connection with this booklet have, with few exceptions, related to budgeting. Among the concerns noted by trial court officials were techniques of budgetary presentation, use of budgeting for internal management control, budgeting for highly variable cost items, organizing a budgetary process and a variety of related problems. This chapter addresses these practical concerns.

Rather than treating these issues discretely, this chapter deals with them as part of the trial court budgetary process. This schematic approach is based on the premise that the budgetary process is a coherent whole and should be treated as such.

No attempt is made to deal with budgetary strategies internal to a court, such as the way a trial court administrator or clerk deals with the judiciary or *vice versa*. The emphasis is upon the overall process by which a trial court formulates and presents its budget and later monitors it. The treatment of the trial court budgetary process is organized as follows:

- Trial Court Budgetary Guidelines (section B);
- Review of Budget Submissions (Section C);
- Financial Policy and Strategy (Section D);
- Budgetary Presentation (Section E); and
- Budgetary Monitoring (Section F).

2. Characteristics of trial court budgeting. Trial court budgeting has a number of characteristics:

- it is a political process in the sense that it involves a complex set of intergovernmental relationships and resolves a number of policy and priority issues;
- it is an adversary process in the sense that it involves some tension between those seeking and justifying budget resources and those determining the allocation of budget resources;
- it is a cooperative process in the sense that it requires a good set of ongoing informal relationships within a trial court and between representatives of a trial court and external agencies;
- it is an educational process in the sense that it provides an opportunity to explain trial court operations and needs to external agencies; and
- it is a managerial process in the sense that it is an

instrument of internal accountability and control and an adjunct of planning.

The political and interpersonal aspects of budgeting are of supreme importance. The prestige of a presiding judge and the friendly ongoing dialogue between a court administrator and a county budget office may outweigh in importance the procedural and managerial aspects of budgeting. Unfortunately, it is not particularly useful to catalog these political or interpersonal techniques, since they tend to be matters of local judgment dependent on factors that are seldom universal.

However, budgeting is not just a political art form. It is a managerial process that provides internal control and supports decision-making. It is a structured means of obtaining and allocating resources and of managing an organization. Trial courts have not generally viewed budgeting in this broad management sense and have seen budgeting as a routine compliance with externally imposed budget procedures. In short, trial courts have seen little need to build upon the executive branch budget for the achievement of managerial needs unique to the judiciary. Yet, there is a need for a trial court budgetary

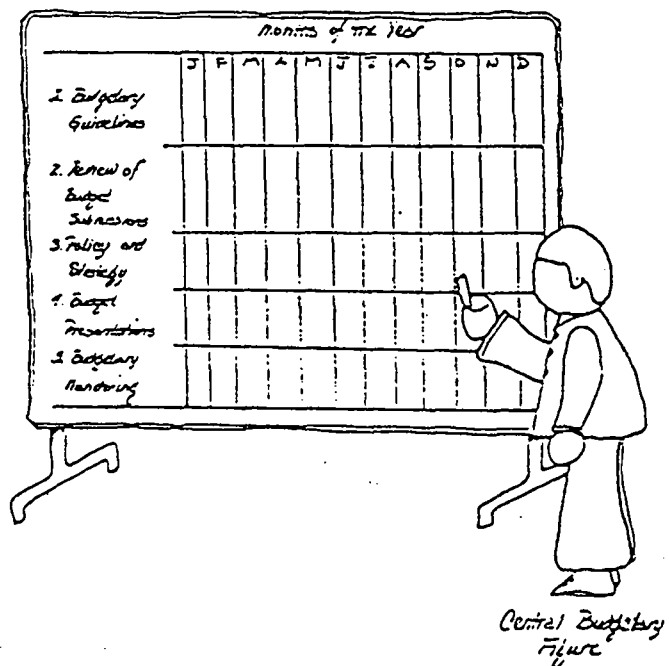


Illustration 2: Trial Court Budgeting
is an On-Going Process

unique to the needs of the judicial branch and which cannot be well-served by the executive branch process. There are at least five areas of budgeting which may require specialized internal treatment because they involve policy decisions on behalf of the court or involve the management relationships between trial court leaders and trial court divisions, specifically:

- imposing court priorities and policies upon court budget formulation;
- budget review procedures to strengthen management control over court operations and to test justifications for budget requests;
- development of an overall court financial strategy, which includes resources other than general fund appropriations;
- determining how to deal with external agencies in obtaining financial resources; and
- monitoring expenditures in relation to appropriations.

Each of the above aspects of budgeting encompasses several elements. These elements, as depicted in Table 3, constitute the ingredients of a trial court budget process:

TABLE 3. *Basic Procedures in a Judicial Budgetary Process*

<i>Type of Procedure</i>	<i>Possible Procedural Steps</i>
Developing an Internal Budgetary Policy	Formulating and promulgating special budgetary requirements for court divisions. Developing and promulgating budget priorities for the court.
Review of Budget Submissions	Identifying key budget issues facing the court. Analyzing budget submissions to determine: <ul style="list-style-type: none"> • justification for budget requests in the light of performance; • justification for increases; and • the substantive and procedural adequacy of budget.
Development of a Financial Strategy	Resolving budgetary policy issues. Formulating a strategy for funding courts, including funds from sources other than the operating budget.
Budgetary Presentation	Determining the general tactics of presentation. Determining the presentations of specific budgetary items (e.g., jury costs, capital expenditures, etc.).
Budgetary Monitoring	Instituting monitoring systems. Monitoring expenditures.

are linked in an overall process. In larger courts, this process would require a number of supporting staff activities. The sequential relationships and staff roles in a trial court budgeting process are depicted in Figure 2.

Figure 2, by necessity, deals with trial court budgeting in very general terms. It does, however, indicate the complexity of staff roles in a court with large internal divisions or a central budget office. In a small and organizationally simple court, no staff may be required at all. The following section indicates the great variety in judicial and staff roles as the result of organizational and administrative differences between trial courts.

3. Organization and administration of a trial court budgetary process. A trial court budgetary process depends upon the existence of some central administrative authority invested with control over budgets submitted on behalf of the court. Due to differences in organization and administration of trial courts, the nature and extent of this authority varies greatly from court-to-court.

The organizational and administrative variables which most affect trial court budgeting are:

- the degree of state funding;
- the powers of the presiding judge;
- the existence of a central budget office; and
- the organizational structure of the court.

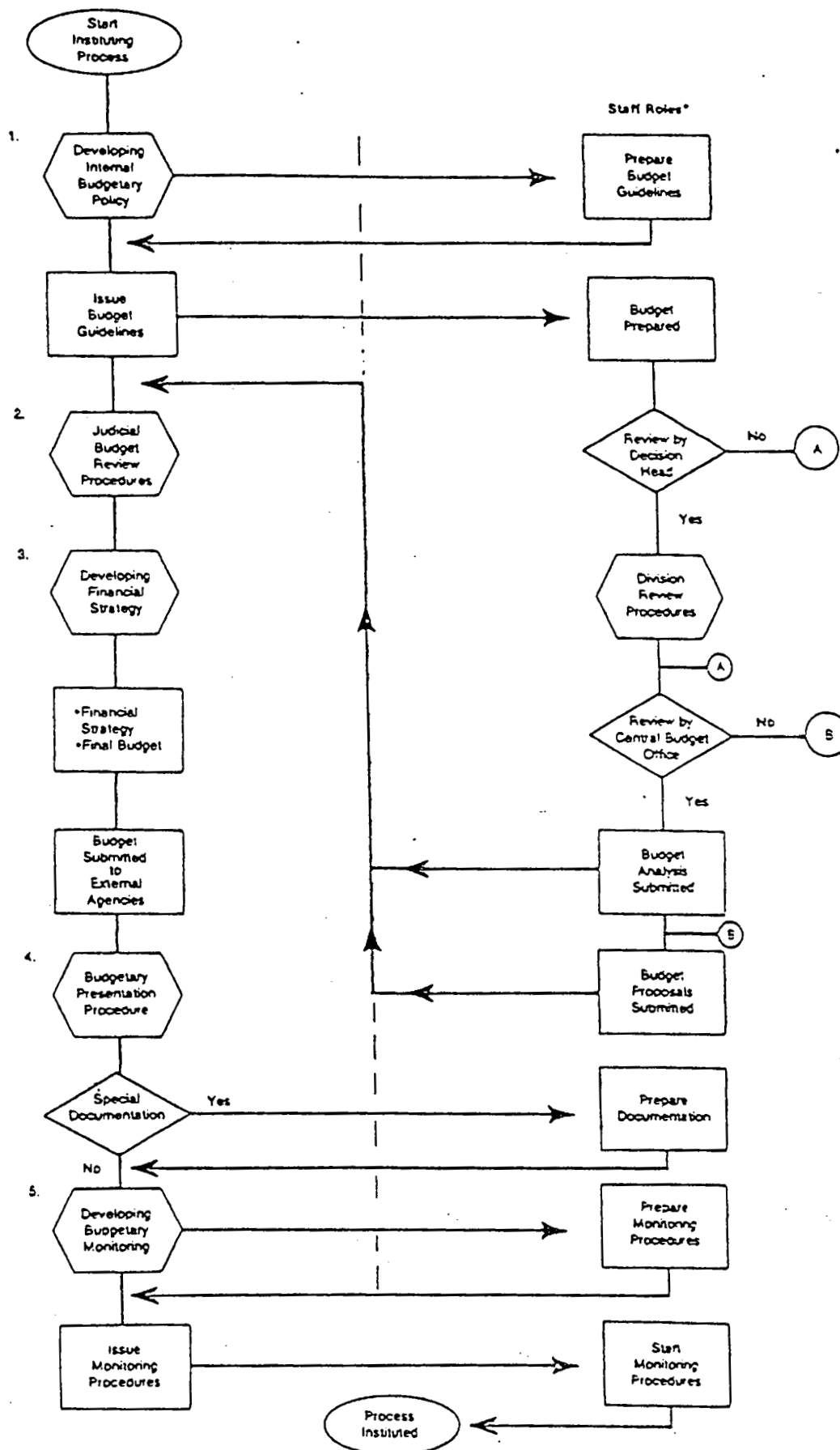
a. *Degree of state funding.* Most general jurisdiction trial courts receive state funding. Where the level of state funding is high, trial court budgeting necessarily becomes state-oriented.¹²

In states where trial courts are wholly or significantly state-funded, budgetary processes are dictated from the state level. Trial courts are excluded from the local government process and become subject to the budget procedures of the state executive branch and also the budget procedures imposed by the state supreme court acting through the state court administrator. Absorption into a statewide budgetary process necessarily diminishes the managerial autonomy of local courts, although the extent of this diminution varies from state-to-state.

The impact of state funding on the budgetary au-

¹²In the following states trial courts are wholly or largely state-funded or are about to undertake state funding: Alaska, Alabama, Connecticut, Delaware, Hawaii, Kansas (1/1/79, court personnel), Kentucky, Maine, Maryland (district courts, circuit judges), Massachusetts, Missouri (circuit court personnel 7/1/81), Nebraska (county courts, district judges), Nevada (probably 1979 session), New Mexico, New York (12.5% per year increments), North Carolina, North Dakota (probably 1979 session), Oklahoma (wide use of court revenues to support courts), Oregon (probably 1979 session), Rhode Island, South Dakota, Vermont, Virginia (district court and supreme court) and West Virginia (except clerks' offices). Data supplied by Harry O. Lawson.

FIGURE 2. Steps in a Budgetary Process



*Particularly applicable in a large court, much less so in a small court.

onomy of trial courts makes itself felt in most areas of trial court budgeting: budget procedures are dictated by the state court administrator; budgetary strategy is also largely determined at the state level, although a trial court may devise its own strategy for dealing with a state court administrator; budgetary presentation is also handled at the state level of the judiciary; and even budgetary monitoring and control may be centered in the office of the state court administrator.¹³

b. *Powers of a presiding judge.* A trial court budgetary process normally culminates in a series of budgetary decisions by a presiding judge. Where the presiding judge speaks for the trial court in budgetary matters, the budget process tends to be simpler and more efficient than it is in a system where budgetary authority is diffused among trial judges. The administrative power of a presiding judge is therefore an important variable.

The powers of a presiding judge may be such that all budget decisions are effectively his, even though he may act through a court administrator or consult with his fellow judges. More commonly, the presiding judge shares budgetary power with the full court or some committee of the court and operates in a collegial environment. In some courts, the presiding judge has very limited authority in budgetary matters, since various judges, clerks or administrators control different parts of the court budget and are subjected to limited central control.

c. *Central budget office.* There are four basic levels of administrative authority over budgeting:

- *Centralized budget preparation.* Each court component submits needs to a central official who puts together a budget for all trial court components.
- *Centralized budget review.* Major court components prepare their own budgets, but do so in conjunction with an administrator who will ultimately review them and pass them on to the judiciary.
- *Partially decentralized budgeting.* There is no central budget office, but budgeting is centered in a few major court divisions which deal directly with the judiciary. Thus, in some jurisdictions there may be budgets submitted to the court by a clerk and by a court administrator. Budgeting in such a court is relatively centralized, although not subject to central staff analysis.
- *Decentralized.* In a totally decentralized budget process, various court divisions present their budget

needs directly to the judiciary without intervening staff analysis. Some court components may even bypass the judiciary altogether.

Trial courts need to have some sort of a staff conduit between the various court components and the judiciary. This relieves the judiciary of the duty of negotiating budgets with several different administrators and provides them with some analysis on which to base their budget decisions.¹⁴

Theoretically, trial court administrators serve this purpose. In practice, many have budgetary responsibility for only certain aspects of trial court operation, so that they may be special pleaders rather than budgetary overseers. The lack of a budgetary overseer can greatly inhibit a trial court budgetary process.

d. *Organizational structure of the court.* Court organizational structure affects budgeting in a variety of ways. Where each major component of a trial court is relatively autonomous, budgeting tends to be decentralized and subject to very limited review by the judiciary. Where the trial courts are unified on a statewide basis, or where presiding judges exercise strong control, budgeting tends to be more tightly centralized.

Most courts lie somewhere between the extremes of total unification at the state level and an anarchic, *laissez-faire* type of budgeting. No ideal budgeting model exists. Budgeting must be accommodated to organizational structure. Table 4 describes some of the principal models of trial court budgeting.

B. Trial Court Budgetary Guidelines

Budget guidelines for a trial court are administrative directives that reflect the internal budget policy of the court. They constitute a judicial branch supplement to the budgetary procedures established by the executive branch.

A court budget guideline could address any or all of the following subjects:

- timing of steps in the court's own review process;
- priorities and money constraints imposed by the court itself;
- program or performance budgeting procedures required by the court; or
- special procedures to strengthen judicial management.

1. Timing of steps in court budget review. The first

¹³In Colorado, trial courts make expenditures against local im-
prest funds for operational expenses, but not personnel or capital
expenditures. In other state-funded systems (e.g., Maine and South
Dakota), expenditures are centrally controlled.

¹⁴In rural areas, one judge may cover a number of counties, and
thus, even though the court budget in each county may be small, the
number of budgetary relationships can be administratively burden-
some. Regional court administrators can fill this administrative need.

TABLE 4. *Standard Budgetary Models in Trial Courts*

Model Description	Principal Funding Source	Locus of Budget Preparation	Review by Court Administrator or Central Budget Office	Review by Judiciary	Comments
Unified State System	State	Office of state court administrator	Administrator may conduct budget hearings; in any event, his office controls trial court budget.	Chief Justice, sometimes the full court, reviews budget prepared by administrator; often a cursory review.	Under this model, trial court judiciary loses much of its power over budgetary policy and may not be involved in budget presentation.
Centralized Local System:					
Large Court	Local Government	Central office answerable to court or court administrator	Not necessary since budget preparation is centralized.	Full review by PJ or whole court.	Reduces direct budget negotiation between judiciary and divisions; court may hear appeals from decisions of administrator.
Small Court	Local Government	PJ or other judges personally involved in budget preparation	Usually no such offices.	Cursory due to judicial involvement in preparation.	Most appropriate in a trial court with a fairly small and uncomplicated budget.
Partially Centralized Local System					
	Local Government	Division level, perhaps separate budgets for some divisions	Review by budget office or administrator answerable to court.	Full review by PJ or whole court.	Most practical model for many courts.
Decentralized Local System					
	Local Government	Division level, perhaps separate budgets for some divisions	No central review, but there may be review by division head (who may be a judge).	Court may conduct cursory review of budgets; some budgets may be submitted to external agencies without court review (e.g., budget of elected clerk).	Court deals on a one-to-one basis with division heads without intervening staff analysis. Court may have very limited authority over some divisions. Weak system.

element of a court budgetary process is to specify the sequence of actions to be performed. This chronology is affected by the budgetary deadlines of the other branches.

The content of such a guideline would be determined by the degree of centralization of the court budget process. In a court where budget preparation is decentralized, the number of steps in the budget process, and the length of the budget process and budget cycle are necessarily greater than those in a court with a highly centralized budget process. Appendix A illustrates a chronological guideline.

2. *Priorities and money constraints.* The budget process of a trial court is normally subject to some money constraints. These constraints may be imposed by external agencies, or they may be imposed by the court in order to hold budget requests to levels which court leaders feel are politically realistic.

Since the funds realistically available to a trial court may not match the funds requested by trial court divisions, the budget process requires that there be some application of priorities. Some courts formally state their priorities to ensure that the court budget comes to them in an acceptable form.¹⁵ Other courts do not deal with priorities until late in the budget process, and then on an *ad hoc* basis. Where a court chooses to pronounce its views on money constraints and priorities, it might appear in a guideline as illustrated in Appendix B.

The illustrative guideline in Appendix B assumes a cooperative attitude between the court and the local executive branch and a willingness of the court to articulate its priorities publicly. These assumptions should be generally valid, but there may be situations where a court will find itself in an inter-branch confrontation and will therefore assert its optimum budget needs without disclosure of its priorities. There also are some jurisdictions where budgetary gamesmanship requires an overstatement of need, followed by a ritual cut.

An important current reason for imposing court budget priorities is rising taxpayer resistance to high property taxes, as exemplified by the 1978 California referendum limiting property taxation. Many trial courts are heavily dependent on county general funds, which are in turn heavily dependent on property tax revenues. There is an increasing likelihood that trial courts will face the prospect of reduced budgets. This prospect should lead to prioritization and will probably take the following form:

¹⁵ Where the trial court has a planning process, priorities can usually be extracted from the plan. Few trial courts have a plan.

- mandated items will be removed from the court budget and submitted independently;
- the functions absolutely intrinsic to the adjudication process will be spelled out and protected; and
- social, administrative and clerical support services will become vulnerable to budget cuts.

Few courts will be invoking inherent powers in the teeth of a taxpayer revolt. An austerity policy may have to be enforced.

3. Program or performance budgeting procedures required by the court. Most trial courts are in jurisdictions which use traditional line item budgets. This time-honored process is well regarded by appropriating bodies, since it lends itself to item-by-item analysis and the identification of reducible expenditures. A typical line item budget is that of the Superior Court of Maricopa County, Arizona, contained in Appendix C.

In Maricopa County, or elsewhere, personnel costs constitute most of the budget and are subjected to the most detailed scrutiny. Line item budgets, with their emphasis on gross numbers in each employee category, provide the type of format which permits county commissioners or budget reviewers to quickly perceive gross increases in each employee category.

While line item budgeting has much to recommend it as a device for simply presenting expenditure needs to appropriating bodies, it has very limited management utility for an administrator.

Line item budgeting aggregates costs by object of expenditure within organizational units and does not directly relate costs to programs and objectives. Thus, a line item budget is not very useful for achieving any of the following:

- for reviewing a total budget request, as opposed to reviewing incremental increases;
- projecting financial needs of the court (which must be done in terms of programs or activities); or
- allocating money to support performance in pursuit of objectives.

It would be a rare trial court that would want to, or need to, institute some detailed version of a modern budgeting system to supplement its line item budget. Yet, many trial courts could strengthen their budget management and planning by using some of the more basic and practical aspects of these modern systems.

The precursors of many contemporary budget systems were the Planning, Programming and Budgeting Systems (PPBS) instituted at the federal level in the early 1960's. This method of financial management arose in the con-

text of defense budgeting, where outlays are enormous, interservice competition keen and choice of alternatives very crucial, both strategically and economically. The essence of PPBS is the analysis of alternatives methods to achieve some defined set of goals and objectives.

PPBS features trade-off analysis, quantification of targets or outputs and long-range programming. It calls for preparation of multi-year budgets relating expenditures to the various programs for achieving goals and objectives. Basically, it is a planning and analytical goal.

PPBS is not particularly well suited to local government agencies with small budgets, few options and a clear mandate to perform certain functions.¹⁶ Trial courts would find PPBS burdensome because the same judges may be engaged in fulfilling several court objectives (e.g., criminal, civil and juvenile objectives), and the cost of their time cannot be allocated to any particular objective.¹⁷

Closely related to PPBS are Performance Measurement Systems (PMS). These systems draw heavily on cost accounting and detailed analysis of work units to be performed for each budget dollar. PMS, like PPBS, requires that budget dollars be related to management objectives, but its principal emphasis is ensuring productivity. Such systems are often accompanied by detailed information systems to measure work productivity.¹⁸

A recent favorite of federal budgeting officials has been Management by Objective (MBO).¹⁹ The system features management participation in the definition of organizational objectives and the relationship of budget requests to these objectives. A principal characteristic of the system is detailed work planning to ensure that the work performed for dollars received achieves the organizational objectives. MBO is geared to management of work tasks and reporting on progress. It is less oriented to cost accounting than PMS.

The current favorite of budgeteers is Zero Base Budgeting (ZBB). This system requires a periodic justification of a total budget request in terms of stated organizational objectives. The system features alternative budget submissions stating how an organization would function at various levels of funding. Many states

and localities are experimenting with ZBB.²⁰

These various budgeting systems differ a great deal in detail, but have some common practical elements, such as:

- their insistence that a budget should be based on a defined set of management goals or program objectives; and
- their emphasis on quantification of the work to be performed for dollars received.

A trial court need not wait for a modern budgeting system to be imposed in order to take advantage of the better elements in these systems. There is considerable intrinsic value in examining the purposes for which money is being spent and the productivity in relation to expenditures.

If a trial court (or more likely, a trial court administrator) chooses to review the court budget in light of court objectives, it would be necessary to articulate what these objectives are and to organize them into a budget structure. The principal objective of a trial court is adjudication of cases. Appendix D illustrates a program budget structure organized around the adjudication function.

There are several ways a programmatic budget structure can be developed. It can be developed by a presiding judge or an administrator for his or her own use so that he or she can relate budget requests to specific court objectives. It can also be developed by involving a number of court leaders in defining objectives. Since many trial court objectives are legally mandated, participatory goal definition may not be necessary.

Where a programmatic budget is developed for the personal management needs of a presiding judge or court administrator, it may not be necessary to superimpose the budgeting requirements by a court guideline. Often it is difficult to impose budgeting techniques which aggregate expenditures without reference to organizational lines, so that some court managers may prefer to make such aggregations by personal estimate, rather than by formal budgetary requirements (as illustrated in Appendix E).

It is quite possible to combine traditional line item budgeting and program budgeting to use the best features of both. Table 5 indicates that it is possible in one format to analyze both the proposed expenditure to meet objectives and the relevant line items.

Placing budget needs in the above format preserves the

¹⁶PPBS is more likely in a unified system with state financing, since the size of state budgets makes program budgeting more useful.

¹⁷For example, Hawaii has a program budgeting system to which the courts must conform. The courts were successful in having the programs adhere closely to the organizational lines of the court.

¹⁸For example, the Circuit Court of Cook County, Illinois, functions within a PMS system and maintains internal records on the work performed by each court unit.

¹⁹The Allegheny County (Pittsburgh) Court of Common Pleas has used MBO budget forms. MBO is also used by the courts in Hennepin County, Minnesota.

²⁰The state-financed Kentucky court system is adjusting to ZBB. At the local court level, both Dade County and Orange County, Florida, have started ZBB. ZBB was abandoned in Hennepin County, Minnesota.

TABLE 5. *Expenditures by Objective and by Object*

Objective	Object of Expenditure				Total
	Personnel \$	Services \$	Supplies Materials \$	Other \$	
Adjudication of Civil Cases					
Adjudication of Criminal Cases					
Provision of Security					
Provision of Social Services					
Administrative Support					

valuable aspects of line item budgeting while adding a new management dimension to the budget—the ability to analyze resource allocation by court objective. It further illustrates the necessity for transferring line items to a program budget format (called cross-walking in budgetary jargon).

In the final analysis, the introduction to objective-oriented or performance-oriented budgeting techniques depends on the managerial complexity of a trial court and how seriously top administrators and the judiciary take their budgetary responsibilities.

4. Special procedures to strengthen judicial management. Where the courts are subjected to a well-developed executive branch budget process, and use it well, few additional procedures are required. These additional procedures could be reflected in budget guidelines and would relate to the internal needs of the judiciary, specifically:

- the managerial need to ensure budgetary adequacy (as illustrated in Appendix F);
- the managerial need to control volatile budget items (as illustrated in Appendix G);
- the managerial need to control budget increases (as illustrated in Appendix H); and
- the managerial need to monitor expenditures of appropriated funds (as illustrated in Appendix I).

5. Conclusion. Trial court budget guidelines should be few in number, strictly supplementary, tailored to the specific needs of the court and very simple. However simple such guidelines may be, they are a key ingredient in the trial court budgetary process.

C. Review of Budget Submissions

Review of budget submissions may occur at various

administrative levels in a court: the division or office level; court administrator level; or judicial level. The nature of a budget review would vary according to the administrative level at which it occurred. For purposes of this section, budget review is discussed as it might occur at the highest administrative level of a court.

Budget review can be considered as a means of answering a few of the following basic questions.

- Are budget requests commensurate with workload and work output?
- Can the court justify proposed budget increases validly?
- Does the budget estimate and control the more variable and volatile item of expenditure accurately?
- What are the future implications of the current budget requests?
- Does the budget meet court needs?

The following section deals with the ways to answer the above questions.

1. Performance analysis.

a. *Purpose of performance measurement.* A requirement that budget requests be justified in terms of work performance can be a major management feature of a budget process. The requirement is based on the premise that budgetary resources are intended to produce tangible results in terms of products, services or other work units.

Relatively few governmental budget processes require quantification of work performance, since the principal focus is on marginal budget increments. Consequently, few trial courts require a linkage between money requested and work to be performed. Yet this requirement offers an important means for trial court leaders to exercise their management responsibility for performance and to review a total budget request, not just proposed increases.²¹

b. *Types of performance measurement.* There are at least six principal categories of performance measurement. Of the six categories of performance measurement in Table 6, four have particular utility for trial courts:

- work input measures;
- work output measures;
- effectiveness measures; and
- efficiency measures.

²¹There is a tendency among trial court managers to see performance measurement in terms of their relationship to the executive branch, rather than as a means of internal accountability to them. For this reason, there is considerable skepticism about performance management.

TABLE 6. *Common Types of Performance Measures*

Type of Performance Measurement	Description of Performance Measures	Examples of Performance Measures
Need/Demand	Measures of client population which require services from or provide work for various court divisions.	<ul style="list-style-type: none"> • juvenile population • number of probationers • number of attorneys • case filings
Work Input	Measures based on amount of work units to be handled.	<ul style="list-style-type: none"> • opinions written • cases disposed
Work Output	Measures reflecting goods and services produced.	<ul style="list-style-type: none"> • filing/disposition ratios • pending cases • time from filing to disposition
Effectiveness	Measures describing the relationship between the work requirements imposed on the court and those performed.	<ul style="list-style-type: none"> • pre-sentence investigations per officer or per week
Productivity	Measures describing outputs per worker or per time period.	<ul style="list-style-type: none"> • dollar cost per disposed case
Efficiency	Unit cost or program cost of output.	

The general tendency is to use input measures, since they provide a large and gross picture of work to be performed and do not offer targets for criticism. Work output, efficiency and effectiveness measures relate more specifically to performance and focus on the cases which reach the stage of hearing or trial.

Typical of these latter measures are those used by the Circuit Court of Cook County, Illinois, in connection with its budget submission:

Functions	Measure
Adjudication	New Cases
Defense	New Cases
Investigations	Investigations
Psychiatric	Examinations
Case Work	Field Cases
Juvenile Court	New Cases & Guardianships
Screening	Interviews
Jury	Questionnaires

The above measures are quite simple. More detailed measures of adjudication are contained in Appendix J.

TABLE 7. *Illustrative Format for Measurement of Performance*

Program	Performance Measure	1976	1977	1978	1979
Criminal	Indictments				
Civil	Civil filings				
Juvenile	Referrals				
Adult	Avg. month case-load				
Probation	Pre-sentence investigations				

Performance measures for a variety of court support functions are contained in Appendix K.

The various performance measures listed in Appendices J and K may provide more detail than is necessary for most court budgeting processes. One or two simple measurements usually give an adequate indication of workload and input trends, as indicated in Table 7.

The gross workload indicators in Table 7 provide some frame of reference for evaluating a budgetary request. There should be some correlation between workload trends and budgetary trends. A simple form is usually adequate to bring major discrepancies to the attention of court officials²² and to permit reallocation of funds (see Appendix L for an illustration of such a discrepancy).

Budget-workload analysis does not always work to the advantage of a trial court. In some jurisdictions, particularly those rural areas with declining populations, caseload may be on a downward trend. Yet it is often unwise to cut appropriations in a rural court. Unlike an urban court, where it may be possible to reduce a clerical staff without affecting basic court operations, rural courts usually have to maintain a certain small core staff simply to keep the court operating, a requirement which is not directly related to caseload. Moreover, rural courts, unlike urban courts, have less ability to reshuffle personnel if there is a reduction in force, since staffs are small and each clerk must perform many diverse func-

²²Realistically, most court divisions will give themselves the benefit of the doubt on predicting workload, but where budgets are placed in a multi-year historical context, the trends will be clear enough.

tions. The unique needs of rural courts deserve a more specialized treatment than is given in this booklet.

2. Increase justification. Proposed budget increases would quite naturally be the subject of a trial court budget review. The purposes of such a review are:

- to exercise management responsibility over requested expenditure of public funds;
- to test the validity of the justification so that the court preserves its credibility with external agencies; and
- to ascertain whether the increase is consistent with court priorities.

Normally, each proposed increase should be justified in writing, the level of detail varying with:

- the newness of the funded item and lack of a "track record;"
- the complexity of the program being funded;
- the amount of the increase; and
- the future implications for even greater increases.

The nature of the written justifications would vary with the type of increase, as described below:

Annualization. This involves spreading over a full budget year the cost of a program funded for only part of the previous budget year. This budget issue is generally settled in the year when partial funding is allowed, quite often as the result of assuming the costs of a federal program which expired part way through the budget year. Annualization should be *pro forma*.

Salary increases. Salary increases may occur as the result of merit increase or promotions. The former are, in some systems, quite automatic and can be computed by reference to eligible employees and anniversary dates. In a system where merit increases are not *pro forma*, an estimate must be made of the percentage of employees which will receive such increases based on past experience. Promotions raise a different problem. Many public agencies try to time promotions to coincide with a new budget year to avoid the problem of guessing and may actually include promotion justification as part of their budget submission. It should be noted that promotions do not constitute a budget problem in any court where there is a fixed amount of authorized positions in each pay grade, but promotions do raise a budget problem if they result in more employees in a higher pay grade.

Costs of operating or maintaining a new facility. A new facility usually is funded from capital funds, but it is not unusual for space to be rented, in which case it is an operating budget item to be judged by prevailing rental

costs. Of equal significance is a reasoned statement of the custodial, maintenance and operational staff necessary to operate the facility.

New legal obligation. Allowances must be made to carry out a new obligation mandated by court rule or statute, (e.g., speedy trial rule).

These costs (often referred to as "legislative impact" costs) are very hard to estimate without a special implementation plan. Often, they are budgeted for after the fact, using experience to justify future costs.

Inflation. Allowance must be made for probable increase in costs of goods and services to courts. This usually does not include cost-of-living increases for staff, which are normally determined on a government-wide basis and are financed by a supplemental appropriation.

Most budget systems allow for a standard inflation factor on goods to be purchased. National indicators may be used, but local trends in prices are a common basis.

Workload. A common cause for budget increases is increased workload. This must be supported by some documentation, such as judge-caseload ratios, probation officer-caseload ratios or other standard justification formulas. The most difficult aspect of this documentation is clearly illustrating how increased activities in court-related agencies augment the workload of a trial court.

Program improvement or upgrading. This increase relates to quality of service and is based upon the need to meet some pre-established standard (e.g., a pre-sentence investigation in each criminal case where a conviction is obtained).

Like "legislative impact," this type of increase tends to be nebulous for documentation purposes. It may require comparative data from elsewhere.

New capital expenditures. For acquisitions other than replacements, there must be a special justification since a new capital item is being added to the court's inventory. This is best handled by an item-specific justification, rather than a "ball park" estimate. In fact, local budgeting practices often dictate such specificity, particularly where revenue-sharing funds are to be used.

New program. A special justification is required for budget increases to start a new program or to assume the cost of a federally funded program. In the latter situation, there is a track record and quite possibly a pre-existing agreement by local or state officials to assume cost of the program. In the case of an entirely new program, the burden of proof is considerably higher, particularly for a program of a complex or technical nature.

The format for written justification of increases might vary. The only key requirement is that the justification be provided to court decision-makers in a relatively uniform

format so that proposed increases can be compared against each other and matched against court priorities. Appendix H illustrates guidelines on the subject.

3. Control of variable expense items. The average trial court budget contains many items which are fairly stable in amount and are almost automatically approved. Personnel costs, inevitably the major budget item, constitute one of the more stable expenditures, since salaries are usually set by a scale and are subject to almost automatic increments.

Trial court budgets also contain items which are more variable and volatile. These items require special management control, since they can expand rapidly and may make the trial court budget subject to attack. The variable items fall into two basic categories:

- legally mandated expenditures; and
- non-mandated expenditures that are subject to quick expansion, if uncontrolled.

a. *Mandated items.* The more common mandated items are listed below.

Juror payments. The right to trial by jury is legally mandated, but it is difficult to predict how the right will be exercised. The number of jurors called, the number qualified and the number who serve are affected by many factors, some of them beyond court control (e.g., prosecutorial and defense tactics). Juror costs can mount rapidly.

Indigent defense. Indigents have a right to counsel and a transcript. Often, courts assume the burden of budgeting for the fees paid to appointed counsel or court reporters. These fees may be subject to a legal maximum or may be open ended. The court cannot deny a right to counsel, but it may control expenditures through its criteria for indigency and its policy on approving fees.

Witness fees. Witness fees, including expert witness fees, may be payable by the court in certain cases. Expert witness fees tend to be open ended. The right to call witnesses is largely beyond court control and quite unpredictable.

Medical examinations. More stringent requirements of due process have required courts to budget for psychiatric exams in cases of civil commitment; courts may also bear the cost of mental examinations in cases where a criminal defendant appears incompetent to stand trial.

Legally mandated items are, by definition, open ended. While such costs can generally be predicted with a fair degree of accuracy, there is no guarantee that legally mandated expenses will follow past patterns. They occasionally escalate quite sharply.

An upward surge in mandated items may cause an

adverse reaction to the rest of the court budget. This reaction may be particularly severe if the court frequently requests supplemental appropriations. Even where courts have limited control over these expenses, they may suffer a loss of budgetary credibility due to a quick rise in expenditures.

In coping with the problems arising from mandated costs, a trial court should:

- explore the possibility of transferring some mandated items out of the court budget (e.g., indigent defense) or of treating mandated items outside the normal budget framework (e.g., a separate submission);
- develop a methodology for estimating costs by use of historical cost trends, historical workload trends and by injecting any new factors likely to affect costs (e.g., a change in *voir dire* practices in jury selection); and
- check current administrative practices to ensure that they are as stringent as possible given the legal rights involved.

Techniques of estimating mandated court expenditure will naturally vary by jurisdiction, since there are wide variations in jury systems, indigent defense systems, witness fees and use of psychiatrists or doctors. There are, however, a few basic factors generally affecting each area of legally mandated expenditures.

Certain jury costs are fairly stable (e.g., grand jury costs and jury commission costs). Other jury costs are much less predictable (e.g., petit juror fees and sequestered jury costs).²³

Petit juror costs should bear some relation to the number of jury trial days, which in turn is limited by the availability of jury courtrooms and trial judges. Petit jury costs are not completely open ended, since no matter how many jury trials are requested, the number of trials cannot exceed the physical and judicial resources.

What runs up juror costs is a call-in of jurors that is excessive in the light of jury trial activity. Paid juror days are a function of these call-ins, not actual days served in jury trials. Consequently budget estimates must be related to call-in practices, while management control must also center on the same practices.²⁴ The key quantifiable item is paid juror days in preceding budget years.

The number of attorneys appointed to defend indigents is a function of the number of persons accused of crimes involving commitment, the prevailing rates of claimed

²³ Sequestered juries may simply be discontinued in some states (e.g., Maine).

²⁴ There are, of course, other factors: jury size, *voir dire* practices, etc.

indigency and the extent to which public defender services are available.²⁵ In a jurisdiction with legally prescribed maximum fees, indigent defense costs can be estimated reasonably well. However, where such fees are open ended, they may run as high as \$10,000 or more in a single case. Therefore estimates must be made in the light of average fees allocated over the recent past in the particular jurisdiction.

Witness fees and medical fees are very hard to estimate and must be based to a large extent on trends over the recent past.²⁶

b. *Non-mandated, variable items.* There are some items in every court budget which are not legally mandated, but nonetheless are troublesome because they are subject to substantial variations from year-to-year, and because they tend to expand rapidly if uncontrolled. Some examples of these items are noted below:

Travel. Judicial travel has increased greatly in recent years, as has travel for clerks, administrators and professional staff. The major items are out-of-state or overnight travel for conferences or for educational purposes, both of which can balloon.

Capital expenditures. Major items of equipment (\$50 or more) can become a troublesome cost factor if not limited by enforced specificity and by a replacement schedule based upon an inventory with a depreciation cycle.

Contractor services. The rigidity of government personnel systems invites reliance on contractor services as an easy way to augment personnel resources. Contractor services require special budgetary treatment.

Electronic data processing. Computer systems tend to grow in terms of sophistication, machine use and support personnel. A change in configuration (for example, an upgrading from a batch to an on-line system) invites a series of future costs that have to be anticipated. Technical review is necessary.

Various other items might be added to those above. The key consideration is that certain budget items require special scrutiny because they are not fixed expenditures and because they possess one or more of the following characteristics:

- they are not items which normally require funding at a fixed level from year-to-year (e.g., contractor services);
- they are "luxury" items which can be transformed into "necessity" items (e.g., out-of-state travel);

²⁵In a large jurisdiction, the cost-per-case for public defender services usually is considerably less than the cost per case where appointed counsel is used.

²⁶Medical fees in civil commitment and criminal cases tend to follow the cost patterns established in personal injury cases.

- they are "risk" items in the sense that they tend to generate sharply increased expenditures in future years (e.g., computer systems); and
- they are politically vulnerable items (those that are likely to be challenged by external agencies).²⁷

c. *Methods of control.* It is possible to control budgeting for variable expense items through the budget review process. It is also possible to control the development of budget requests in this area, rather than oppose inflated requests after they have been made. The latter method can be incorporated in a budget guideline (see Appendix G).

4. *Multi-year trend analysis.* A general weakness of budget reviews is a failure to regard budget requests in a multi-year context. Without this frame of reference, it is hard to discern historical trends or future courses of direction. This lack of time perspective hampers decision-making in several ways:

- escalating cost items are less likely to be detected;
- the future impact of current expenditures is less likely to be anticipated; and
- financial planning is largely negated.

As a general rule, there is merit in using a five-year time frame which includes two previous years, the current year and two future years. (Appendix M illustrates a three-year time frame). In order to project expenditures several years into the future, it is almost imperative that such a projection be in programmatic form, since expenditures are a function of program activity.

The significant aspects of a five-year analytical time frame are that:

- it provides two previous years of actual expenditure as a data base;
- it permits easy identification of expenditure trends by organizational unit or by program, as well as by object of expenditure;
- the format lends itself to cross-comparison with workload data in the same period; and
- it requires a two-year projection, so that some consideration must be given to cumulative costs and future impacts.

The above benefits are substantial. The greatest benefit is the last because it relates to planning, a relatively unused art.²⁸ Any trial court plan must, as a matter of

²⁷In many jurisdictions, appropriating bodies focus their economic zeal on those items in a court budget which are not directly related to adjudication, in particular, social programs.

²⁸See, *Establishing an Effective Court Planning Capability, the Financial Aspects of Court Planning*, Court Planning Capabilities Project, Denver: National Center for State Courts, 1977.

necessity, include financial projections over a multi-year period. If the budget process is based on one budget year, there is a divorce of budgeting from planning, which is detrimental to both.

5. Procedures to ensure budget adequacy. A trial court budget may prove deficient in several regards, such as:

- failure to meet requirements of form; and
- failure to meet the resource needs of the court by reason of omissions or misestimates.

The executive branch budgetary procedures are not designed to help courts protect themselves against their own mistakes. There must be some protective procedures internal to the court.

Mistakes of form are seldom fatal and normally require only an admonition to observe those aspects of externally imposed budgetary procedures which have proved troublesome in the past.

Substantive mistakes and omissions are far more serious. A trial court can find itself strapped for funds and somewhat embarrassed by failure to ensure that every aspect of court needs has been considered prior to budget submission. To preclude such a failure, it is prudent to institute internal budget procedures which force systematic consideration of those budgetary items which most often are overlooked or misestimated. Typical of the budgetary items which require special consideration are the following:

POINT TO BE CHECKED.

NATURE OF CHECK.

Allowance for New Positions	Determination that budget reflects salary costs at the appropriate pay grade for newly authorized positions.
Allowance for In-Grade Salary Increases	Usually an automatic computation based on anniversary dates, but will require a more sophisticated projection if increases are not automatic. Should be a routine budget inclusion.
Allowance for Cost-Of-Living Increases	May not be a budget item in a jurisdiction where each cost-of-living increase must be approved by the governing body and financed by a supplemental appropriation. Where the increase is more or less automatic, the court budget should reflect the increase at the inflation rate specified by local enactment.
Allowance for Fringe Benefits	Governments vary markedly in budgeting for employee benefits, such as: retirement and health insurance. Some treat fringe benefits as an overhead item financed from one fund covering all agencies, but others require each agency to budget for some or all fringe bene-

POINT TO BE CHECKED.

NATURE OF CHECK.

Allowance for Temporary, Part-Time Help, Vacation Time	Determination of how to budget for a right mix of full-time and part-time employees so that court is adequately staffed at peak periods and in vacation periods.
Allowance for Contractors	Determination of how to supplement full-time staff with contractors. Budget should include money to cover any anticipated task which cannot be performed in-house. Amount allocated should reflect reality of task to be performed and prevailing contractor rates.
Intergovernmental Services	Determination of how to supplement in-house personnel by retaining services of other governmental agencies (may include personnel, space, equipment rental, supplies and other costs). The budgeted amount is often negotiated in advance.
Federal Funding Impact	Determination as to whether budget should reflect new money to match federal funds (often matching is handled by appropriations from a general matching fund); determination as to budget impact of a reduction or termination of federal funding for a particular program during the budget year.
Increase in Cost of Goods	Ascertain whether allowance has been made for inflationary increases in supplies, equipment, utility costs, travel costs and other services; also whether selected inflation factor is adequate.
Impact of Major System Development	Ascertain whether cost impact of major new management systems (e.g., information systems) have been fully anticipated as to personnel, space, equipment and other costs.
Impact of Normal Workload Increases	Ascertain whether impact of continuing upward trends in workload has been reflected in the budget.
Impact of Changes In Law or Rules	Ascertain whether impact of new legal or procedural requirements has been anticipated in the budget, and if so, how adequately.
Impact of New Facilities or New Judgeships	Creation of a new facility or a new judgeship creates a series of related personnel and equipment needs which must be anticipated in a budget. Should almost be a formula.
New Programs	The cost of new programs is often under-

POINT TO BE CHECKED.

NATURE OF CHECK.

estimated. Failure to anticipate start-up costs (i.e. initial outlays) is quite common. This is an area where omissions frequently occur.

Anticipation of Highly Variable Costs

Ascertain whether computation of jury costs, indigent defense costs, witness costs or medical and psychiatric exam costs are computed without omission of key factors. This is an area of frequent underestimation.

Contingency Fund

Budgeting is at best, an inexact science. Prudence dictates that there be some contingency funds, normally placed in various line items of a "soft variety" and running roughly 1%-2% of the total budget.

As a matter of internal control, a trial court can identify those budget items of maximum concern and require that they be specifically addressed in the budget process, as illustrated in Appendix F.

It is not enough just to ensure that overall funding is adequate. It is important that there be a check to determine if funds are adequately distributed. This is best done in terms of a program budget, as illustrated in Appendix N.

6. Conclusion. The basic steps in the budget review process are simply:

- comparing performance to money requested;
- requiring justifications of increased expenditures;
- protecting the court against overruns arising from volatile expenditures;
- projecting the court's needs beyond the current budget year; and
- ensuring that the budget meets the resource needs of the court.

Review is impossible without some sort of budget analysis. This requires staff with the expertise to perform such an analysis. This type of staff support is crucial. Appendix O contains a sample budget analysis, outlining all aspects of budget review as it might occur in a well-staffed trial court.

D. Financial Policy and Strategy

A major problem of trial court budgeting is that it is seen in a very mechanical and microcosmic way, simply as a means of obtaining appropriations from a state or local general fund. However, a budget can be more than a routine funding document. It can be the principal component of an overall financial plan for the court and a

means of establishing the financial posture of the court in relation to external agencies. In short, it can have significant policy implications.

1. Financial plan of court. General fund appropriations are the principal, but by no means the sole, source of funds for trial courts. A trial court budget is part of a larger plan for funding court operations and capital improvements, if such are needed. Budget decisions, therefore, are made in the broader context of a financial plan which integrates all possible funding sources available to trial courts. The more common funding sources are listed in Table 1, *supra*.

a. *Mix of funding sources.* The ultimate policy consideration for a trial court is determining the appropriate mix of funding sources to meet the financial needs of the court. This financial plan should exist, in at least rough form, at the time of budget review so that the court can identify redundancies in funding sources and make sure that no item of financial need is ignored because it was mistakenly assumed that it would be paid from some non-budgetary source. What is required is some overall frame of reference, such as that contained in Appendix P.

The value of the table contained in Appendix P is the perspective which it provides to decision-makers. It permits them to determine:

- if alternate funding sources have been ignored;
- whether alternate funding sources can be used; and
- the totality of court expenditures.

The last-mentioned benefit is often ignored. The budget process, because it is the most important process for resource generation, tends to obscure the fact that a court may have a variety of actual or potential funding sources.

b. *Revenue considerations.* A related aspect of total, resource financial planning is the relationship of revenues to expenditures. The amount of revenues collected by general jurisdiction trial courts is usually not high in relation to expenditures (unlike limited jurisdiction trial courts where revenues often equal or exceed expenditures). Nonetheless, revenues are often viewed as offsets to expenditures by the executive and legislative branch, and trial courts, for better or worse, have to include revenues in their planning and conduct ongoing analysis of the court's revenues.²⁹

²⁹In some jurisdictions (e.g., Oklahoma) court revenues go into a judicial fund so that operations are financed by general fund appropriations and earmarked revenues. In these jurisdictions, revenues are more than an offset; they are a basic funding source.

A starting point for any revenue analysis is to systematically analyze the whole revenue system, which is often complex and is sometimes not very fair³⁰ or efficient.³¹ Such an analysis obviously does not have to be done on an annual cycle, but the existence of such an analysis and its periodic updating is a necessary aspect of overall resource planning. A typical analytical format is illustrated in Appendix Q.

A corollary of the analysis depicted in Appendix Q is a projection of revenues. This directly relates to expenditure projections and is an essential element of a financial plan. Revenue projection is often a function of caseload and should be projected within upper and lower ranges, as illustrated in Appendix R.

A final component of a financial plan is the linkage between expenditures and revenues. From a tactical viewpoint, it is usually unwise for a general jurisdiction trial court to emphasize this linkage, since it fosters illusions that trial courts should be self-supporting. It is, however, important to consider revenue factors, since they can occasionally be used advantageously in budget presentation, and since they are a logical part of any financial overview. Appendix S illustrates a format for comparison of expenditures and revenues.

2. Financial posture with respect to external agencies. The budget process involves an element of inter-branch tension, since there is an adversary aspect to budgeting. This inter-governmental by-play is normal and usually not extreme. It is, nonetheless, a fact of life which very often requires that trial court leaders develop and implement a policy for dealing with external agencies. For obvious reasons, such a policy might not be reduced to writing. Some of the financial policy issues faced by trial courts are indicated below.³²

a. *Ceiling on court expenditures.* Not uncommonly, trial courts are directed by external agencies to keep their expenditures within certain limits. The normal origin of such a mandate would be the executive branch of a local government. The mandate can take various forms and may even involve a reduction in resources. Typical mandates might be: an order to hold budgets at the previous year level and to absorb automatic increases; an order to keep increases within prescribed percentage limits; or an order to hold authorized positions at existing levels and not to fill vacancies.

³⁰ Court costs and fees can reach a point where they limit access to the court. This must be weighed against the natural inclination to make litigants pay for use of the court.

³¹ Where a great variety of small costs are collected, the administrative burden may outweigh the revenue.

³² These issues do not, on the whole, apply to unified systems.

Whatever the form of the order, it poses a policy problem for trial courts, since the judiciary may choose to challenge such restrictions. Generally, trial courts have few legal weapons at their disposal, other than assertion of inherent powers, but rarely are courts forced to the extreme of ordering other branches to honor their requests. Quite often, they can achieve their objectives by a less blunt assertion of judicial branch prerogatives.

The ultimate dollar amount requested by a court is a fundamental policy decision, since it involves the political relationship of the court to other governmental bodies and may, in certain circumstances, involve a confrontation with these bodies.

b. *Internal control of budgeted funds.* Trial courts vary widely in terms of their power to transfer budgeted funds freely. In some courts, there are great restrictions on the transfer of funds from one line item to another. This can lead to negative spending in one item and gross under-expenditure in another. This may, in turn, inhibit the court's ability to obtain funds in the next budget cycle.

The ultimate goal of any court is a lump sum budget which frees trial courts from line item restrictions and permits free transfer of funds. This freedom of allocation can often be achieved on a *de facto* basis by an informal understanding with the executive branch or by invocation of inherent powers. The former method is preferable.

Sometimes a trial court may encounter opposition to free transfer of funds. This situation may foment a policy issue requiring that the court seek greater latitude in allocation of appropriated funds.

c. *Supplemental or open-ended appropriations.* Since courts have some variable, but legally mandated, expenditures, trial courts occasionally have budget crises that bring them into conflict with the other branches of government.

A basic policy issue with many trial courts concerns their need to finance such costs by supplemental appropriations or open-ended appropriations. This issue involves the legal duty of courts to provide services regardless of budget constraints.

d. *Control of special court funds.* Many trial courts are the beneficiaries of special funds earmarked for court purposes. These funds are normally fed by special court costs and are under direct control of the judiciary. Such funds provide an important supplement to budgeted funds and give a trial court considerable flexibility.

Very often, a revenue-starved local government casts covetous eyes on such funds and suggests that they be absorbed into the general fund. This attempt may start with a request to audit the fund.

Court control of these funds can become a major policy issue, one on which a trial court may periodically have to take a stand.³³

e. *Access to non-budgeted funds.* For purposes of equipment acquisition or facility construction and renovation, trial courts often seek money from funds other than the general fund. Access to federal revenue-sharing funds and capital funds is often sought.

Courts do not always have good success in obtaining state or local capital funds for facility construction or renovation. The exclusion of trial courts from such funding can raise a significant policy issue.

f. *Pressure to forego independent management systems.* A frequent point of tension between courts and external agencies arises from executive branch pressure for courts to forego their own management systems and to use executive branch systems. A classic example is pressure to use a central county computer.

Very often, it is economically beneficial for a court to use an executive branch computer. Occasionally, however, a court finds it advantageous to have its own equipment, especially since mini-computers have become more available. The executive branch may choose to block such an acquisition through the budget process.

This problem of judicial branch independence occurs with some frequency and can be a major policy issue.

Other policy issues could be listed, but it is sufficient to note that a trial court budgetary process raises issues which can only be resolved by the judiciary.

E. Budgetary Presentation

1. *Section overview.* The budget process can be viewed as a series of negotiations with, or presentations to, various governmental officials. Viewed in this way, the process starts with the initial negotiations internal to the court and moves through a series of presentations culminating finally in the ultimate appropriation. Each set of negotiations and presentations involves different actors and different emphasis. This section describes the actors and the factors pertaining to their interaction.

2. *The progression of budgetary negotiations and presentations.* Although there is infinite variety in local budgetary processes, there is a certain general progression of budgetary interactions common to most jurisdictions. These interactions follow the principal phases of budgetary development:

- internal budget development;
- informal contact with external budget reviewers;
- determining the court's budgetary posture; and

³³ It is natural for a court, or any agency, to desire earmarked funds. Generally speaking, these funds cannot be defended as consistent with good management principles.

- formal presentation of the court's budgetary position.

a. *Internal budget development.* The initial interaction in the budgetary process is usually between the person (or persons) charged with pulling together preliminary budget figures and those officials with administrative responsibility for court operations. This opening exchange is usually informal, except in a highly structured court. It concerns the anticipated needs of various court divisions in the next budget year.

This process may be somewhat adversary if the trial court has some pre-established budgetary priorities. More often than not, it is a cooperative endeavor to ensure that court needs are anticipated and met. Much depends on the position of the budget-maker. If the budget-maker is a top administrator or a judge, the initial negotiations can result in some basic decisions which will probably be sustained by the court. If the budget-maker is a fairly low-level official, the initial budget interaction is primarily a cataloging of needs.

b. *Informal contact with external budget reviewers.* Many administrators feel that informal interchange between court budgeters and external budget reviewers is the key aspect of the budgetary process. While this appears to be a generally accepted principle, its application varies widely because of governmental organization.

In locally funded jurisdictions, the key external contact is the budget officer or budget analyst who represents the executive branch in dealing with the courts. However, some local appropriating bodies have their own staff so that court budgeters may have to deal separately with this staff.³⁴ The extent to which each staff should be consulted is a function of the relative budgetary powers of the executive branch and the appropriating body. Very often, one or the other dominates the budgetary process.

In a unified system, the informal contact is usually with a budget officer on the staff of the state court administrator's office or directly with the state court administrator himself.

With the exception of Colorado, where the state court administrative office conducts budget hearings on trial court budgets, most unified court systems rely on less formal methods of budgetary development.

Regardless of whether a system is unified or non-unified, it is prudent to reach budgetary accommodation in a dialogue which precedes the more open and rigid as-

³⁴ Obviously, there may also be informal contacts above the staff level (for example, contact between a judge and a county commissioner). However, matters of budgetary detail are mainly handled at the staff level.

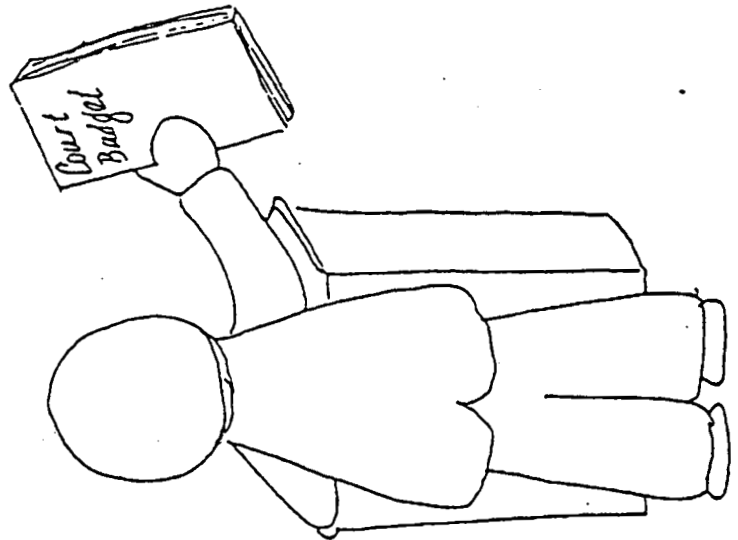
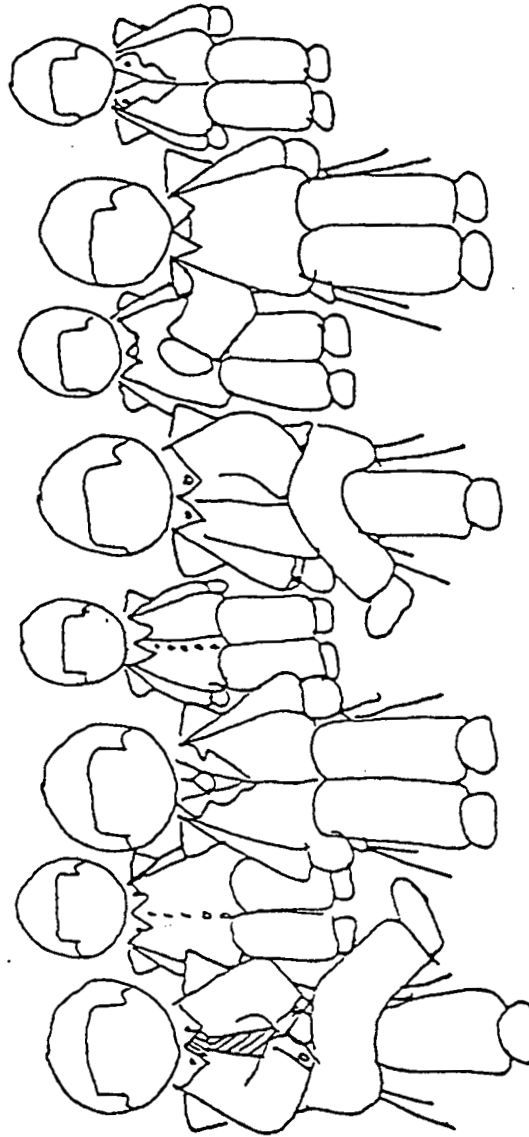
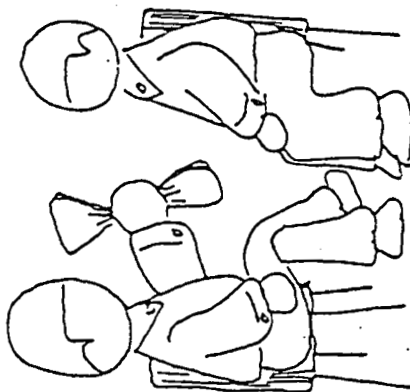
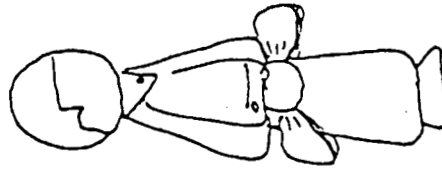
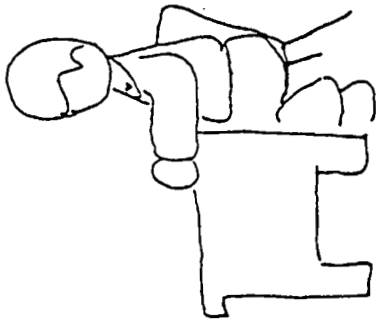
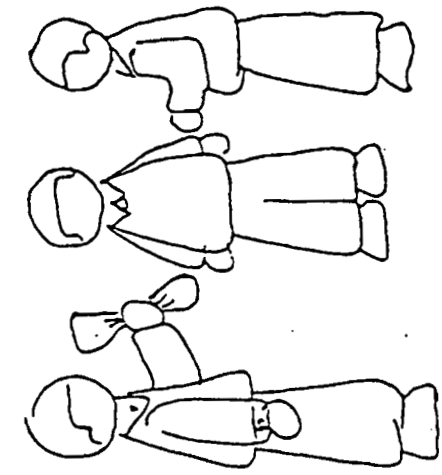


Illustration 3: The Budget Process is a Series of Negotiations

pects of the budget process. This dialogue permits an interchange of viewpoints without involving the prestige of a presiding judge or his leadership counterparts in the other branches. Except for "show-down" issues where there is a very fundamental difference of opinion, many budgetary issues can be resolved prior to a formal budgetary position being adopted by the court.

c. *Determining the court's budgetary posture.* The adoption of a formal budget position by the court involves interaction between the budget-maker and the judiciary. The form of this interaction varies widely.

In many courts, judges are so involved in the budget development process that their adoption of the proposed budget is usually routine. They are, in effect, interacting with themselves.

In other courts, judges may not be heavily involved in the budgetary process so that administrators and division heads may have to make a defense of the budget and win support of the judiciary. This usually consists of persuading a judge or judicial budget committee, who in turn persuade the full court.

There is a considerable difference between this process and external budgetary presentation, since the latter process is more likely to be adversary. Internal budget presentation often emphasizes that the court's needs have been fully covered, whereas external presentation places emphasis on demonstrating that the court's needs are justifiable. This is not to say that the judiciary is unconcerned with budget economy, but only that judges are likely to see their principal responsibility as maximizing the resources available to the judicial branch.

d. *Formal presentation of the court's budgetary position.* A formal presentation of the court's budgetary presentation normally takes the form of a presentation to the chief executive of the local government, followed by another presentation to the appropriating body. There are, however, many variations in this pattern.

In a state-funded system, trial court officials may not even be involved in the formal presentation which is handled by members of the upper judiciary, the state court administrator or other state-level officials. The presentations at the state-level may be made to the executive branch, the legislative branch,³⁵ or both.

At the local level, formal presentation is governed by local government structures. Many local governments do not have the clear demarcations between the three branches, which exist at the state and federal level, and

thus do not require a formal budget presentation from the judiciary to each of the other branches.

For example, the county governing board in some jurisdictions exercises both legislative and executive functions, with the consequence that the court need not deal with two separate branches. There are, in fact, jurisdictions where a member of the judiciary has important executive functions in the county³⁶ or where a clerk of court is also a key official in the other branches of local government.³⁷ Each court must, therefore, deal with the other branches within the context of its local government structure.

Where inter-branch relations are fairly structured and follow state-level models, formal budgetary presentations are common practice. These presentations tend to follow two principal patterns:

- a relatively *pro forma* public ritual to ratify previously arranged decisions;³⁸ and
- a full-scale budget hearing with considerable questioning.

Within the same jurisdiction, a trial court may find that its presentation to the executive branch is a hard session, while its presentation to the appropriating body is only a ritual appearance. Very commonly, the court budget is presented as part of the executive branch budget with the principal burden of presentation to the appropriating body being that of the executive branch.

Where the chief executive presents the court budget, the court is often well advised to assume a low profile during presentation to the appropriating body, since court expenditures generally constitute a small percentage of total expenditures and may not be the subject of close scrutiny.

Presentation strategy must be altered occasionally due to changes in local government structure or leadership. If, for example, there is a change in government structure, such as a home rule charter,³⁹ budgetary techniques may change. Even a change in county managers can shape change in the way a court presents its budget, since

³⁵In Tennessee, a county judge is a top county executive. In many Alabama counties, probate judges have a strong executive position in the county.

³⁶A chancery clerk in Mississippi is the chief of staff for the county governing board and the county treasurer.

³⁷In some jurisdictions, there is a ritual "holding the line," followed by a series of supplemental appropriations. In some other jurisdictions, there is a ritual budget-cutting with the percentage well-known in advance of the cut, so that cuts can be anticipated.

³⁸For example, charters in St. Louis County and Kansas City greatly strengthened the budgetary powers of trial court administrators in relation to clerks, changing the whole nature of budgetary development and presentation.

³⁹In a state like Colorado, where the legislature dominates the budget process, the presentation is made only to the legislature. In Hawaii, the courts also deal directly with the legislature.

court officials may have to assume that the budget process will be adversary until they arrive at a *modus vivendi* with the new manager.⁴⁰

In the final analysis, trial court officials must evaluate their local budget structure to determine how seriously to approach formal budgetary presentations and whether and how to involve the presiding judge. Only a few basic ground rules can be advanced in this highly-politicized area of local government, such as:

- the role of the presiding judge, if any, should be largely ceremonial unless there is a serious inter-branch confrontation which requires an assertion of judicial branch prerogatives;
- the administrators or clerks familiar with budget detail should be present, but should advance no more information than is minimally demanded by local practice; and
- court representatives should be prepared to defend vulnerable sections of the budget, if necessary.

The last point is crucial and largely depends on a knowledge of the local governing hierarchy and how they approach a budget. Fortunately, in most jurisdictions informal interchange resolves many of the budgetary problems well in advance of public hearings, which represents a poor forum for consideration of financial issues requiring a detailed factual presentation.

3. *Techniques of budgetary presentation.* There are situations when trial court officials must make some presentation in defense of the court's budget or parts of it.⁴¹ Justifications are infinite in variety, but tend to be based on certain standard affirmations such as:

- increases in the workload require that the court have more resources;
- legal enactments, rules or case law impose mandatory requirements which can be met only with additional resources;
- the proposed budgetary increases will yield benefits which largely offset the increased expenditures;
- the increases are required to meet contractual or other commitments to court employees; and
- the increases are required to meet changed conditions in the economy, in particular inflation.

⁴⁰In one jurisdiction covered by the survey in connection with this booklet, the presiding judge only attended executive budget hearings if there was a new county manager. This was designed to provide a display of court prestige in the event the new manager used the budget hearings to effect budget cuts, rather than to ratify pre-existing agreements.

⁴¹For an extended discussion of trial court budgetary techniques, see Griller, Gordon M., *The Politics of the Court's Budgetary Process*, Denver: Institute for Court Management, 1976.

a. *Increases in workload.*⁴² Increases in workload are among the most common justifications for seeking budget increases. Workload increases are usually presented in the form of workload-personnel ratios, such as: judge-caseload or judge-disposition ratios; probation officer-caseload ratios; and clerk-pending case ratios.

Such ratios are often refined by inclusion of data to show the maximum or average number of work units that can be achieved by each employer in a particular class (e.g., a probation officer can handle only fifty probationers).

This traditional form of presentation has the advantage of simplicity and can be effective if the ratios are regarded as valid by appropriating bodies. However, such ratios do not usually reflect the real costs of increased work output, since they tend to focus on individual categories of employees rather than on the aggregate costs of disposing of cases—the fundamental work unit of any court.

To remedy this deficiency, trial courts may keep documentation on cost-per-case so that they can demonstrate the added costs of processing more cases.⁴³ This technique permits a court to state that it takes \$1000 or \$2000 to dispose of each case and that an estimated increase in cases to be disposed will require a commensurate increase in the budget.

Cost-per-case data, to be effective, must be maintained over a multi-year period so that cost patterns have been validated by experience. Costs can be computed in several ways, such as:

- by dividing case dispositions into total operating costs;
- by dividing case dispositions into those costs directly related to adjudication (juror costs, witness costs, judicial salaries and salaries of personnel closely related to the adjudication function); or
- by refining the above approach to compute cost-per-case for each major type of case (civil jury, civil non-jury, criminal, juvenile, etc.).

⁴²Some trial courts have to deal with the problem of decreasing workloads and the need to hold their existing level of appropriation. This defensive action generally involves one or more of the following strategies: rural courts can truthfully assert that there is a basic cost just to conduct each session of court and that caseload only marginally affects costs; it can often be demonstrated that the court was underfunded in relation to its previous caseload; and it can often be shown that reduction in activity has been offset by increases in the cost of purchasing goods and services.

⁴³The Superior Court of Los Angeles County has performed detailed cost studies to determine the cost of operating each courtroom. The cost study also shows costs in major program areas and makes a distinction between direct and indirect costs.

Most courts do not have the accounting capability necessary to handle anything but a gross computation of cost-per-case. There is, however, merit in seeking a more sophisticated computation of costs, one which distinguishes between the direct and indirect cost of adjudication, establishing a fixed relationship between the two so that appropriating bodies accept the fact that adjudication carries an over-head cost in the form of various clerical, social and administrative support services.

This educational task requires that trial courts acquire the ability to document such facts as the following:

- that it costs \$2000 to adjudicate a case; and
- that there is an indirect cost of 55% to adjudicate a case.

Such a presentation will require an accounting system currently lacking in most trial courts.

b. *Response to legal requirement.* Trial courts must respond to a broad variety of legal actions occurring at the State or Federal level. Explaining the monetary impact of these legal requirements to a county commission is a difficult undertaking.

Generally, these legal requirements take one of the three following forms:

- a speedy trial law or rule;
- case law or statutes requiring that some new or additional procedural protections be provided; or
- legal enactments imposing upon local government some new or additional cost to support court operations.

A speedy trial rule involves a concentration of resources in a reduced time span and is very hard to cost out without some empirical data on actual operation of the system. In theory, the reduction of the average time to process a case will increase case costs, since work output is concentrated in a shorter time period. In actual practice, the cost increase may be marginal due to reduction in slack time, improved procedures and a higher rate of cases disposed without trial. The one certain extra cost is the expense for clerical and information services to monitor the time deadlines. Other costs require some documentation.

Legal requirements to meet some form of procedural fairness are usually not popular. Unlike speedy trial rules, which may produce a general benefit, increasing the quality of justice has few tangible political benefits. Thus, budget increases to meet these requirements are best presented in a context of utmost frugality. For example, if a trial court is required to budget for indigent defense, the budget should document the methodology

for maintaining a low cost-per-case, such as: rigorous voucher checking; a limit on fees (if possible); and stringent criteria of indigency. Budget requests can be presented in terms of cost-per-case where this demonstrates economy.

Another area where unit costs are usually helpful is in asking for funds to support new judgeships. Often, a legislature creates judgeships without consideration of the corollary costs to local government and the budget increases which this entails. Start-up costs to support a new judgeship should be treated as a unit cost composed of some or all of the following items:

- salaries of confidential employees (typically, secretary, bailiff and law clerk);
- additional judicial travel costs;
- initial orientation costs (for example, courses at Trial Judges College or state judicial college);
- facility space based on cost-per-square-foot-per-judge, with an allowance for renovation; and
- equipment costs (e.g., typewriter, recording equipment and law books, if not furnished by state).

Creation of new judgeships can, if properly handled, be turned into a budgetary opportunity rather than a budgetary disaster.

c. *Offsetting benefits.* Often increased court expenditures can be explained in terms of benefits to be derived. These benefits may be "soft" benefits (for example, the social good to be derived from a family counseling program). The benefits may also be more tangible. Typical of the cost-benefit presentations made on behalf of court budget items are the following:

ITEM	BENEFIT
Microfilming	The floor and file space saved offsets the cost of the microfilm system.
Recording Equipment for Judges	The increased bench and chamber time of the judges (as computed in dollar terms) more than offsets the equipment cost.
Word Processing	The savings in secretarial time offsets the equipment cost.
Computers	Some computer systems, particularly minis, can be partially cost justified by savings in clerical costs. Another common justification is that certain computer systems enhance the court's ability to monitor costs and to schedule cases more efficiently.

Any expenditure which increases personnel in revenue-producing areas has an automatic offset (for example, addition of personnel to enforce support payment). The return to the county in terms of welfare is often substantial where support orders are sternly enforced.

d. *Inflation.* Inflation is a factor in any governmental budget. Most commonly, it applies to capital expenditures, material and supplies. Unless there are pre-existing purchase contracts with vendors, it is legitimate to assume a 5%-6% inflation increase based upon catalog costs at the time a budget is drawn. Inflation also affects personnel costs, but, generally speaking, cost-of-living increases are handled on a government-wide basis.

e. *Increases required by personnel policy.* Sometimes by union contract and sometimes by local personnel policies, courts commit themselves to certain courses of action in regard to personnel compensation (for example, that 50% of all court employees will annually receive merit increases or that a certain level of performance will merit promotion). Some of these policies may actually be formal commitments in rules or a contractual provision, but often they are traditional policies. Many local governing bodies are more concerned over keeping faith with employees than with elaborate economic justifications.

F. Budgetary Monitoring

1. *Rationale for a monitoring system.* A normal inclusion in any budget process is the monitoring of expenditures. The purposes of such monitoring are:

- management control to ensure that spending stays within budget limitations;
- advance discovery of possible overspending problems, which may require supplemental budget requests or management changes to effect savings;
- investigation of underspending to determine if there have been serious misestimates of costs or failure to perform certain functions;
- development of a data base on which to gauge money flow⁴⁴ and on which to base budget decisions for future years; and
- perhaps, in an advanced system, to link expenditures with workload reporting so that the court can detect if performance data is consistent with the data submitted to justify the budget.

While it is evident that trial court leaders must assume responsibility for expenditure management, it does not

⁴⁴In a court with a quarterly budget allotment, money flow may vary somewhat from quarter-to-quarter.

necessarily follow that they must institute a special trial court monitoring system. Most courts rely on periodic reports from the executive branch to keep track of their expenditure of budgeted funds, and such reports may suffice for monitoring purposes.

The problem with reliance on executive branch reports is that they may not be timely or current and that they often array data in a manner which is useless for purposes of judicial administration. Very often, a trial court may only need to monitor certain more troublesome expenditure items and may, therefore, find little utility in a print-out which lumps these items in broad categories and is several weeks out-of-date by the time it is issued.

As a result, many trial courts will find it useful to maintain a simple internal system of budget monitoring which supplements the executive branch reports by providing:

- current data on expenditure items so that a pre-audit system for expenditure approval can be effective;
- focus on the expenditure items of special management concern to trial court leaders;
- the level of detail required by the court; and
- a cross-check on executive branch figures.

2. *Instituting a monitoring process.* There are certain standard steps to institute a monitoring process, as follows:

- to determine if all expenditures, or only certain types of expenditures, are to be monitored; if the latter, to define the specific expenditure items;
- to determine the types of information required for monitoring purposes and the sources of such information;
- to determine the best methodology for obtaining the information, including any special forms or procedures;
- to link the process to a system of pre-audit or expenditure approval, so that expenditure data passes through some control point;
- to delegate administrative responsibility for monitoring to some individual or office;
- to define the types of reports to be made by this individual or office; and
- to incorporate the above in a court directive.

3. *Elements of monitoring.* A monitoring process can be very simple and still be very effective. Its internal elements are not complex.

a. *Central monitoring point.* Central monitoring implies a degree of centralization which may not exist in some courts. In an administratively fragmented court, monitoring may have to be decentralized. Generally,

however, it is preferable that monitoring data pass through one point (for example, a trial court administrator's office).

The type of data passing through this point might include:

- copies of the payroll;
- requests for permission to make a purchase of goods and services;
- requests for permission to start a formal process of procurement for major contract services;
- proposed contracts for goods and services;
- copies of executed contracts, purchase orders, and requisitions; and
- executive branch reports on expenditures.

The fact that the above data are collected at one point does not mean that contracting, purchasing or fund accounting are carried out by the monitor.⁴⁵ It is only necessary that the monitor regularly receive copies of all documents on expenditures or encumbrances and that requests to make expenditures or enter into contracts be routed through the monitor for high-level administrative approval.

b. *Recording of monitoring data.* A monitor may be directed to keep track of all expenditures,⁴⁶ but very commonly he or she may be asked to monitor only a few items which require special control, most commonly legally mandated expenditures (such as appointed counsel fees, capital expenditures and contractor services).

A monitor would normally maintain current expenditure and encumbrance records so that decisions on purchases or acquisitions could be made on the basis of these data. These records may be no more than a manual supplement to executive branch reports with the monitor periodically reconciling his or her records with executive branch records. This type of periodic cross-check often proves to be helpful in protecting the court against vagaries in the governmental accounting system.

The typical data items in a budget monitoring system are:

- appropriations for the budget category being monitored;

- transfers (i.e., transfers of funds from, or to, the particular fund being monitored);
- expenditures to date (and possibly expenditures to date within quarters if the court is on a quarterly allotment system);
- encumbrances, normally contractual obligations to expend budgeted funds;
- balance of unexpended, unencumbered funds; and
- percentage of budgeted funds remaining.

The foregoing data can be recorded for a number of small line items or for only major budget categories. This is simply a function of the desired level of management detail.

The foregoing data can also be broken down by organizational unit or compiled for the court as a whole. In most large courts, separate organizational treatment would be more useful, as illustrated in Appendix T by reference to a clerk's office.

The table in Appendix T represents a fairly simple and standard mode of monitoring. It may not suffice for monitoring a complex and variable type of expenditure where the court must have a greater level of detail at its disposal. Thus, for example, a trial court may decide that indigent defense fees must be monitored by individual judges and by type of proceeding. Appendix U illustrates a detailed monitoring form for indigent defense and further illustrates that there is no set model for monitoring. The key control factors have to be identified and built into the system as required.

c. *Monitoring reports.* There is no important purpose served by deluging trial court leaders with monitoring reports. A principal purpose of monitoring is to detect problems in their early stages so that exception reporting is normally sufficient. An exception report simply indicates expenditure patterns which suggest an incipient problem. Such a report may also contain some brief background data. Appendix I illustrates such a report within the context of a budget guideline.

4. *Conclusion.* Monitoring is not the last step in a linear process, but a recurring function in a cyclical process. The budget process is, or should be, a year-round management role, rather than a mechanical function of securing funds. This has been the essential point of chapter 3.

⁴⁵ These functions are very often carried out in the executive branch on behalf of the court.

⁴⁶ Some trial courts handle all fund accounting for their own operations, in which case a special monitor is superfluous.

QUESTIONS

- WHO FUNDS THE COURT?
- ARE ALL COURT EXPENSES IN THE-COURT'S BUDGET?
- IS THE COURT PAYING EXPENSES THAT DO NOT BELONG TO THE COURT?
- DOES THE COURT HAVE AN OPPORTUNITY TO PRESENT AND EXPLAIN THE BUDGET TO THE TRIBAL COUNCIL?
- DOES THE COURT HAVE AUTHORITY TO SPEND ITS BUDGET?
- CAN THE COURT DETERMINE HOW MUCH MONEY IS LEFT IN THE BUDGET?

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	Actual Costs for Last Budget Year	Budget Request for Present Budget Year	Final Budget for Present Budget Year	Estimates for Present Budget Year	Projections for Next Budget Year
PERSONNEL					
Salary					
.Judges					
.Staff					
Fringe					
Benefits					
.					
.					
.					
.					
(Sub-total)					
SERVICES					
.					
.					
.					
.					
.					
(Sub-total)					
OPERATING COSTS					
.Telephone					
.Travel					
.Office					
.Supplies					
.					
.					
.					
.					
.					
(Sub-total)					
Equipment/ Furniture					
.Purchase					
.Rent					
.Repair/ Maintenance					
(Sub-total)					
FACILITIES					
.Purchase					
.Rent					
.Repairs/ Remodeling					
.Maintenance					
(Sub-total)					
TOTALS					

COURT REVENUE

Last Year	Estimate for Present Year	Projections for Next Year	Comments

GENERAL

- . Marriage fees
- . Docu. Repro.
- . Affidavits
- . Interest from investment of court revenue

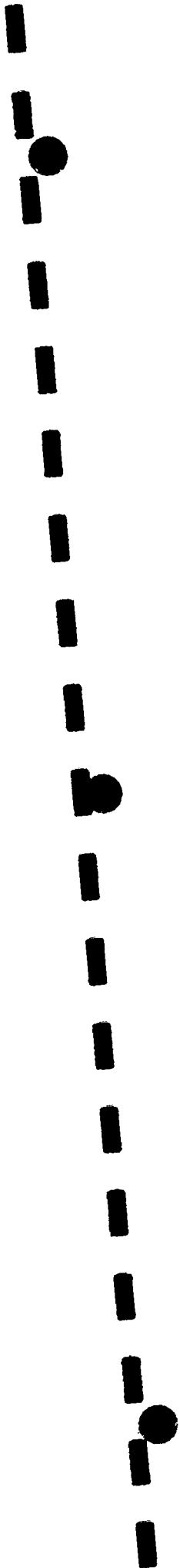
CRIMINAL CASES

- . Fines
- . Court costs
- . Bond fees
- . Interest from bonds
- . Reimbursement attorney fees
- . Bond forfeiture
- . Prob. oversight fees
- . Rehabilitation fees
- . Restitution

CIVIL CASES

- . Filing
- . Jury trial
- . Trial
- . Forms
- . Judgment
- . Motions
- . Garnishment
- . Reinstatement
- . Appeals
- . Service
- . Receiverships
- . Friend of Court
- . Family counseling
- . Affidavits

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COURT LIBRARY
AND LAW STUDENTS

LIBRARY
STANDARDS FOR INDIAN COURTS

Prepared by
The National Center for State Courts
1982

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STANDARDS FOR INDIAN COURTS

The goal of an Indian Court Library should be to select, acquire, organize, maintain and make accessible materials of a legal, management or administrative nature, print or non-print, which will satisfy the operational, informational and educational needs of the Court, Tribe Government (including the Legislature, Police, Prosecutor and Probation), Private Attorneys and tribal members.

The following standards are designed to achieve the above noted goal.

I. RESPONSIBILITY FOR LIBRARY

- A. An Indian Court Library should be under the control of the chief judge and general supervision of a qualified court administrator/clerk.
- B. The responsibilities and duties of the court clerk relative to the court library should be in writing and well-defined.
- C. Regular meetings should be scheduled and recorded at which the court administrator/clerk can report to, and receive directions from the Court.

II. PLANNING

- A. The court administrator/clerk should be kept fully informed of policy and program developments of the judicial system in order to plan library services to meet changing needs.
- B. From its inception, planning that concerns any or all of the following areas should involve the court administrator/clerk:
 - 1. Growth of the collection.
 - 2. Personnel to provide service to users and the collection.
 - 3. Physical facilities.
 - 4. Bibliographic and physical control of the collection and its access.

III. BUDGET

- A. Separate Budget: The budget of an Indian Court Library should be separate and sufficiently adequate to insure a well-qualified staff and a complete, up-to-date collection, with provision for new acquisitions as needed.
- B. Responsibility: The preparation, presentation, and management of the budget is a prime function of the court administrator/clerk.
- C. Funding: Normally a court will not be able to fund in a single year the cost of an ideal library. Therefore, a court should use its limited funds to purchase the most needed additions to a library. In addition to a court's normal budget appropriation, there may be other sources of funding for library materials.
 - 1. Courts of Indian Offenses: The BIA is responsible for providing to CFR courts copies of "all Federal and State laws and regulations of the Bureau of Indian Affairs applicable to the conduct of Indians within the reservation." See 25 CFR 11.12.
 - 2. Tribal Bar Associations: If the court requires attorneys or law advocates to be admitted to practice before the court, it may be appropriate to access a fee that would be used to purchase library materials (especially if Bar members use the library).

IV. PERSONNEL

- A. The Court Administrator should have specific training regarding the requirements, operation, and maintenance of a court library.
- B. Court Staff should be assigned specific duties relating to the operation and maintenance of the library.

V. PHYSICAL PLANT AND FACILITIES

- A. Location: The court library should be housed in the same building, or in close proximity to the court so as to achieve the efficient and maximum utilization of space and the potential for convenient access to the library.
- B. Shelving should be adequate to hold the collection in convenient arrangement for use and allow for expansion of the collection.
- C. Equipment and Workspace: There should be provision for suitable equipment and work space for administrative, processing and reader assistance tasks of the library staff.
- D. Seating: Ample attractive work areas and comfortable seats should be provided for users of the collection. Good lighting is essential. Conference rooms, photocopy service and typing facilities should be within easy reach if not a part of the library quarters.

VI. READER SERVICES

- A. Reference Service: The library should provide reference service upon request, drawing upon interlibrary loan service from other libraries when necessary.
- B. Catalogs and Indexes: A public card catalog and standard legal bibliographic materials, i.e., indexes, library catalogs and bibliographies, should be available for use of the staff and patrons.
- C. Signs and Library Guides should be provided to assist patrons in finding their way about the library and into the collection.
- D. Circulation: Formal circulation policies should be established for both court and non-court library patrons.

Court personnel may borrow bound journals and treatises by filling out paper circulation cards which ideally list call number, date due, volume number, title, borrower, address and telephone number. See Exhibit 1. These slips should be at a designated location. Materials other than treatises and bound journals may be checked out by signing these out in a court check-out notebook.

Non-court personnel may borrow only bound law reviews and treatises which must be returned within five days. An individual circulation card, as described above, is filled out for each volume checked out of the library.

Experience has shown that judges, law clerks, and attorneys are quite impatient with having to fill out numerous lines before taking a book from the library. The check-out procedure could be simplified, while still retaining control, if the patron's activity is restricted to merely a signature and phone number. This would involve providing a book card with each book, each card carrying identification information about the book. This procedure should be implemented for books presently in the library and on an on-going basis for new books. This procedure would provide a more accurate, concise and current control of circulation.

Exhibit 1

Call Number	Date Due	Volume Number
	Title	
Borrower		
Address		
Phone		

- E. Photocopying Services: The library should have photocopiers located in or close to the library. "Self-service" photocopying service could be made available to local attorneys and parties at a fixed cost per page. Tribal agencies or personnel should not be charged for copies made; rather, such costs are absorbed as part of normal court operations costs.
- F. Binding: The binding of current periodicals and the rebinding of selected worn volumes should receive regular attention by the court.

VII. TECHNICAL SERVICES

A. Acquisitions

1. Books: As a library collection expands, and the demand for professional legal services increases, any library acquisition policy must be periodically reviewed to ensure that it reflects the increased responsibilities. In addition, any established book selection policy, whether written or unwritten, should ensure that all newly published law titles quickly come to the attention of the librarian through such standard book selection aids as the following:
 - Law Books in Print (a listing of books of law and related fields arranged by author, compiler, editor, subject, title and series), supplemented by Current Law Books Published.
 - Current Publications in Legal and Related Fields (this is a monthly listing of new legal publications and supplements which includes the Checklist of Current State and Local Publication; it is released semi-annually), or the Rothman Green Slip Service, an earlier listing of titles which later appear in Current Publications.*
 - Current Acquisitions Lists from other Libraries.
 - The Weekly Record
 - LC Proof Slips for KF Titles, if available from the state library at modest or no cost; otherwise, the expense is not justified.
 - Publisher's fliers and catalogs
 - Book reviews

*Current Publications would, in the large majority of instances, meet the needs of the law library as well as the Green Slip Service which costs considerably more. Although the "green slips" provide a more convenient method of ordering books, their main purpose is a quick reporting of newly published law titles, and for this purpose the additional expenditure could hardly be justified.

These basic materials will provide the library with a means of reviewing new legal literature for purchase consideration. Most current acquisitions are selected from publishers' trade notices or purchased in response to patron requests. However, the process of book selection must be expanded so that the range of available materials can be reviewed and considered. The selection aids will provide the library with adequate and timely legal listings at a minimal cost.

2. Periodicals: It is generally agreed that legal periodicals are an invaluable source for keeping current on recent legal developments and often provide some of the most in-depth analysis, analyses and appraisals of legal concepts.

The periodical collection reflects the appropriate degree of importance attributed to it by the court and the dedicated efforts made in its development.

Given a limited book budget, any future additions should be current subscriptions to numerous additional titles rather than long back runs of a few. Sources valuable as guidelines for additions would be:

- Index to Legal Periodicals
- Shepard's Law Review Citations
- Index to Periodical Articles Related to Law
- Periodicals listed in an article by Cameron Allen, "Duplicate Holding Practices of Approved American Law School Libraries." 62 Law Library Journal 191 (1969).

Appropriate indexes are, of course, indispensable for the effective use of a periodical collection. In addition to the Index to Legal Periodicals, the library should consider additional indexes, even if many of the titles indexed are not presently in the library collection. The additional indexes would provide references to valuable material which might be obtained from other libraries.

3. Looseleaf Services are indispensable in any law library requiring quick, complete and extremely current information on specialized legal topics. These services are invariably expensive, but provide information otherwise unavailable with the scope and currentness required.

B. Selection of Library Materials

1. Factors: The selection of material added to the collection is the responsibility of the court and court administrator and reflects compliance with the collection development policy. Suggestions for purchases are encouraged from the users and the staff and should be given serious consideration. The factors used in selecting and purchasing materials of the library include the following items.

- Expressed or anticipated interest in the subject.
- Contemporary significance and/or permanent value of the title to the collection.
- Scope and depth of the existing subject collection.
- The authority of the author (no author's works will be excluded from the collection solely because of his/her personal history, political affiliation, race, sex or cultural background).
- The authority and reputation of the publisher or producer.
- The technical excellence and durability of the format.
- Availability of the same title or information elsewhere.
- Appearance of the title in special bibliographies or indexes.
- Price.

An item need not meet all these criteria in order to be acceptable. When judging the desirability of material, any combination of standards may be used.

2. Multiple Copies: Multiple copies of titles may be obtained when there is an expressed need or heavy use. Duplication should be kept to a minimum but materials should be in sufficient supply to make the library a dependable source for most of the users most of the time.
3. Complete Sets: All material should be current with respect to continuations, supplements and replacements, sets should be complete and unbroken.
4. Interlibrary Network: The court administration should have the authority to join a regional, national or interlibrary network if it is to the advantage of the library to do so.

C. Format of Materials

1. Books: Where there is a choice, hardback books are preferred to paperbacks. Supplements and updating services should be purchased if books (or sets of books) are periodically updated by publisher.
2. Serials: Periodicals are purchased for one or more of the following reasons:
 - To provide current information not yet covered in book form.
 - To supplement and enhance the total collection.
 - To serve the staff as book selection aids and professional reading.

Accessibility of contents through indexes, cost of the subscription in relation to possible use, and availability of the title in nearby libraries are special considerations in the acquisition of periodicals.

The library should attempt to acquire leading legal serials of value to legal research.

Except for materials of a temporary value, serials publications received in unbound form should be bound as soon as practicable after receipt and the collection as a whole should be maintained in a good physical condition through reconditioning, rebinding or replacement as required.

3. Microforms will be obtained whenever possible for materials which require large amounts of space but are not heavily used.
4. Government Documents: The library should chose most classes of federal and state publications of a legal nature which are provided automatically from the Government Printing Office. Items should be selected in conformity with the overall selection policy.

C. Catalog

1. Format: The collectinm should be cataloged and classified in a system that makes it possible to retrieve the desire material quickly and easily by both the patron and the staff. National standards for bibliographic records should service as guidelines.
 2. Accessibility: The catalog should be available for use of the staff and patrons.
 3. Inventory: The library may also maintain a holding (inventory) file and/or visible file to provide service and maintain bibliographic control of the collection.
- E. Storage and Destruction: Book discarding is an integral part of collection development and maintenance. It is through the process of selection and weeding that a vital, useful, and well-kept collection is maintained. Weeding should be conducted on a regular basis to assure that patrons are not misled by superseded works and those rendered out-of-date by subsequent legislation. In general, the same criteria apply to weeding as are used in the selection of new materials. Additional considerations are physical condition, the number of copies, and research value. Procedures for the removal and dispension of library materials should be defined in a court policy statement and at the discretion of the court administrator. This policy should be flexible enough to permit sale, exchange, storage or destruction of superseded volumes at the discretion of the librarian, so that space now occupied by out-of-date works can be used for other purposes.

The law library should not automatically replace all materials withdrawn because of loss, damage, or wear. The same criteria that apply in original selection will apply to replacement with particular attention given to the following:

- The demand for the specific title.
- The continued value of the particular title.
- The availability of newer or better materials in the field.
- Number of copies held.

VIII. Collection

The library should contain the volumes that make it an effective information resource for the clientele and purpose it is organized to support. Standard and recommended lists from professional associations or accrediting agencies are useful guides to this end.

A. Tribal Publication

1. Constitution
2. By Laws
3. Tribal Code
4. Tribal Court Opinions
5. Trial Court Rules
6. Appellate Court Rules
7. Personnel System Rules and Procedures
8. Accounting Procedures

B. Indian Publications

1. National American Indian Court Judges Association
 - A Criminal Court Procedures Benchbook
 - B Civil Court Procedures Benchbook
 - C Basic Civil Law for Tribal Courts
 - D Indian Court Judges Benchbook (1977)
 - E Criminal Court Procedures Manual (1971)
 - F Model Indian Court Rules of Criminal Procedures (1977)
 - G Introduction to Legal Research and Case Analysis
 - H Cases and Materials in Law of Evidence
 - I Courts & The Juvenile Offender (1978)
 - J Child Welfare & Family Law (1976)
 - K Indian Child Welfare Act Handbook (1980)
 - L Model Appellate Procedures Code (1977)
 - M Criminal Law for Indian Courts (1980)
 - N Model Code of Judicial Conduct for Indian Court Judges (1981)
 - O Criminal Procedures Handbook for Indian Court Clerks (1980)
 - P Basic Procedures in Civil Trial for Indian Court Clerks (1980)
 - Q Indian Courts and the Future (1978)
 - R Indian Court Judges Directory (1981)

2. American Indian Law Training Program

- A Indian Law Reporter
- B Tribal Court Reporter
- C Basic Criminal Law Trainee Manual
- D Basic Civil Law Trainee Manual
- E Indian Child Welfare Act Trainee Manual
- F Contracts and Torts Training Session Trainee Manual
- G Justice and the American Indian
 - Volume 1: The Impact of Public Law 280 upon the Administration of Justice of Indian Reservation
 - Volume 2: The Indian Judiciary and the Concept of Separation of Powers (1975)
 - Volume 3: The Effect of Having No Extradiction Procedures for Indian Reservation
 - Volume 4: Examination of the Basis of Tribal Law and Order Authority (1975)
 - Volume 5: Federal Prosecution of Crimes Committed on Indian Reservations
- H Issues in Mutuality (1976)
- I Indian Self-Determination and the Role of Tribal Courts (1977)
- J Investigative Hearings: Administration of Justice in Indian Country (1980)
- K Manual of Indian Criminal Jurisdiction (1978)
- L Justice in Indian Country (1980)

3. Bureau of Indian Affairs

- A Collection Officers Handbook (1975)
- B Native American Indian Tribal Court Profiles (1982)

4. National Center for State Courts

- A Jury Trial Manual (1982)
- B Juror Guide (1982)
- C Federal Garnishments (1982)
- D Records Management Manual (General Standards) (1982)
- E Court Manual Guide Lines (1982)
- F State Court Enforcement of Indian Court Judgements (1981)
- G Indian Court Libraries
- H Tribal Code Codification System

5. Other

- A. American Indian Law (In a nut shell) by West Publishing Company (1981)
- B. Handbook of Federal Indian Law, by Felik Cohen (published by the University of New Mexico Printing Plant)
- C. Cases and Materials on Federal Indian Law by Getches, Rosenfelt and Wilkinson (West Publishing Co. 1979)
- D. DC Directory of Native American Federal and Private Programs, Phelps Stokes Fund (1981)

C. State and County

- 1. The published reports of decisions of all appellate courts (including lower court reports where published).
- 2. The best available current statutory compilation. This assumes annotated edition if one is available. Also a complete set of older statutory compilations.
- 3. The session laws and legislative journals.
- 4. A state digest.
- 5. Shepard's Citations for the state.
- 6. All significant local text books and treatises as well as Attorney General Opinions, State Bar Reports, and Form and Practice Books.
- 7. All legal periodicals and newsletters published in the state.
- 8. Legislative manual and roster.
- 9. State administrative code and municipal and county codes if appropriate and available.
- 10. All state and judicial conference reports and any recommendations of state law revision commissions.

D. Federal

- 1. Reports and decisions of the United States Supreme Court.
- 2. United States Code Annotated and/or United States Code Service including Congressional Service.
- 3. Statutes at Large.
- 4. A digest of all United States Supreme Court Reports and Federal Reports.
- 5. Shepard's United States Citations and Shepard's Federal Reporter Citations.
- 6. The Code of Federal Regulations (especially 25 CFR) and the Federal Register.

E. General American Publications

1. The American Digest System.
2. American Jurisprudence and Corpus Juris, first, second, and third, and fourth editions.
3. A broad collection of legal periodical titles which are listed in Index to Legal Periodicals.
4. Index to Legal Periodicals.
5. All American Law Institute Restatements.
6. A basic collection of legal text-books and treatises of contemporary value on legal subjects of interest to the clientele of the library.
7. One legal and one general dictionary (unabridged), one good forms book, and one general encyclopedia.
8. Words and Phrases.
9. U.S. Law Week and Criminal Law Reporter.
10. Uniform Laws Annotated.
11. ABA Code of Professional Responsibility.
12. ABA Code of Judicial Conduct.

F. Microforms can be regarded as satisfying the collection requirements.

4.

4.

4.

REVENUE ACCOUNTING



NEBRASKA COUNTY COURT SYSTEM
ACCOUNTING MANUAL

Prepared By
OFFICE OF THE STATE COURT ADMINISTRATOR
NEBRASKA SUPREME COURT

May 1975

I INTRODUCTION TO COURT ACCOUNTING SYSTEM

Court accounting may be said to be comprised simply of recording, summarizing and reporting financial transactions. When compared to commercial accounting, a unique characteristic of governmental accounting emerges, that is, a dependence upon a system of laws and regulations. Nebraska statutes prescribe the duties of the Clerk of the court and specify the fees to be charged as well as the responsibilities for distributing the court's income.

The accounting system must form the base for meeting statutory requirements. The accounting system, its terminology, procedures and statements must take cognizance of and be adapted to legal requirements. For the accounting system to serve as a means of communication, certain uniform fundamental conventions must be established.

The court's accounting system is established on a cash basis. Cash basis simply means that income is recorded when received and expenditures are recognized and recorded when paid. This method of accountability is not particularly recommended by the accounting profession; however, the more complex double-entry, full or modified accrual accounting system is not considered necessary for the efficient accountability of the court system. Simplicity of recording financial transactions, with built-in cash control, plus ease in extracting reportable information is considered sufficient, taking into consideration that the cost operation of the total court system is the responsibility of the state accounting and audit system.

1. DEPOSITS

Deposits from the Court's safe or vault into the locally approved bank should be made regularly. How often this is done depends upon two considerations. The first is the amount of money to be deposited, the second being the length of time you are holding personal checks for fines or fees. The recommended depositing cycle is daily. Although the statute is silent as to the frequency of deposits, no court should hold money collected more than three days. Exceptions to this should be dealt with on an individual basis and only after the approval of the County Judge or State Court Administrator.

Regardless of how often the deposits are made, the court should conduct a balance at the end of each day. Daily balances help to locate an overage or shortage should they occur.

2. TRANSPORTING DEPOSITS

Once a deposit is made up, the next task is getting it safely to the bank. Care and planning should be made to assure the safety of both the deposit and the depositor. In the larger jurisdictions, armored car service may be a viable solution. However, the vast majority of our courts do not have armored car service available. It is in these jurisdictions that certain steps should be taken to secure the safe delivery of the court's money.

The following are suggestions a court should consider when transporting deposits:

- (a) Do not make up the deposit in view of the public.
Use the vault or private office.

- (b) Never carry a "bank deposit pouch" out in the open.
- (c) When the size of the office staff permits, employees should change off delivering the deposits.
- (d) Try to get the sheriff or local police to escort or transport large deposits.
- (e) As much as possible, try to vary the time of day that the deposit is made.
- (f) If the bank is several blocks away, use a different route from time to time.
- (g) Do not use postal service.
- (h) If an agent other than a court employee transports the deposit, use a key lock bag, and get a signed receipt from the agent.

3. CHECKING ACCOUNTS

The court should maintain sufficient checking accounts to efficiently carry out its financial responsibilities. The size and activities of the court will greatly influence the decision to have more than one checking account. It is generally recommended that only one checking account be used by the County Courts.

4. OUTSTANDING CHECKS

Every court will experience the situation of having to balance at the end of the month and account for all the outstanding checks. Frequently some checks will remain outstanding for a long period of time.

A thorough review of these checks should be made to determine the best possible method of clearing them and disbursing the revenue as much as possible. Disposing of unclaimed witness fees is covered by section 77-2403, R.S. Supp., 1974,

which says that all unclaimed witness fees remaining in the hands of the court after six months should be paid to the county treasurer. These funds are to be credited to the common school fund of the county. An outstanding check paid to an attorney and uncashed should be cleared up by contacting the attorney.

If a situation exists where an outstanding check cannot be cleared up, the court should stop payment on the check and place the funds in trust.

Each check should contain a preprinted statement indicating it will be void after a certain period if not cashed.

5. OLD TRUST FUNDS ON HAND

As in the situation of the outstanding checks, the court may have unclaimed funds in the court's account. These funds may be a result of a civil, condemnation or criminal case. They can even be unclaimed judgments or fees and costs.

A renewed effort should be made to disburse these funds to the proper parties.

6. VOIDING RECEIPTS

The occasion may arise when a written receipt will have to be voided. Every effort should be made to retrieve the original receipt. This receipt should be stapled to the copy that is retained in the court.

In large letters, "VOIDED" should be printed across the face of both copies. If the cash and fee ledger has already

been posted, a similar remark should be written next to the entry. The reason for voiding the receipt should be entered on both copies of the receipt and witnessed by signature of a responsible court officer. (Associate Judge or County Judge.)

If a new receipt is written, a cross reference should be made on the "VOIDED" receipt showing the new receipt number on which these funds are accounted for. In the event the original receipt cannot be returned, the bookkeeper should note on the "VOIDED" copy an explanation of where the original is thought to be located.

7. PERSONAL CHECKS

Allowing parties to pay by personal check has been a problem in almost every court in Nebraska. As a product of our modern times, it's rather difficult to lay down a hard and fast rule that no personal checks will be allowed. Nevertheless, each court should use reasonable care when allowing personal checks to be written.

A general rule of thumb when adopting a check policy is, do not take any check where you have no recourse. Out-of-state checks particularly fall into this category. Even many out-of-town checks are extremely difficult to recover if they are insufficient.

In many instances where you do not know the individual and they are writing a check on a local bank, a quick call to the bank will provide sufficient security to accept their check.

Current address, place of employment and telephone number should be obtained before accepting a personal check whenever possible. Write the receipt number on the face of the check.

Checks should be deposited as soon as possible after receipt. A check that is good the day it is written may be insufficient two days later.

8. INSUFFICIENT FUND CHECKS

The odds are, if you accept personal checks, some are going to be insufficient. When this happens, the faster you contact the party, the quicker your recovery rate will be. You should also call the bank immediately to see if it is good. If the bank reports that it will clear, and it is a local bank, you should ask them to put a "hold" on that account for the amount of the check and get the cash immediately.

If the bank says it will still not clear, you should make every effort to contact the individual involved and have him come to the court and pick up the check.

The procedure you use to recover insufficient fund checks will largely depend upon the local conditions. In no event should the court accept a check post-dated or one known to be insufficient and hold it for a few days before including it in a deposit.

You can save bookkeeping entries if you recover the insufficient fund check in the same month in which it was written. Redemption of insufficient fund checks should be by cash or postal money order.

II INTERNAL CONTROLS

Internal controls provide a system of accounting that protects the public and private funds handled by the courts. A large portion of these funds is in the form of cash.

Cash is more susceptible to theft than any other asset. Furthermore, a large portion of the total transactions of a court involve the receipt and disbursement of cash. Internal control over cash is of great importance to the court and to the employees in the court. While the court has an interest in good control of its assets, the employees have a direct, personal interest in the internal control over cash. If a cash shortage arises in a court and the internal controls are weak or non-existent, it is very difficult to locate or track down that shortage. The situation will exist where no one employee can be blamed, but neither can any one employee not be blamed.

On the other hand, if internal controls are adequate, shortages are virtually impossible or are quickly located. In the case of theft, the honest employee can always prove exactly what amounts of cash he has handled. Good internal control over cash transactions is, therefore, important not only to the courts, but also in maintaining good employee relations. No employee likes to be responsible for a loose financial operation.

1. ORGANIZATION AND PERSONNEL

A formal plan of organization is an essential characteristic of effective internal control. The plan of organization should assign responsibilities and duties to specific persons. In

this manner, individuals are made accountable for the custody of assets and the performance of duties. The assignment of accountability in the plan of organization is a central feature of good internal control. The person who is accountable is expected to perform in a specified manner and to illustrate satisfactory maintenance or disposition of assets.

2. EMPLOYEE BOND COVERAGE

The employees of the Court should be bound by a policy that insures loss through the failure of any of the employees, acting alone or in collusion with others, to perform faithfully their duties or to account properly for all money and property received by virtue of their employment.

3. SOUND BUSINESS PRACTICES

The handling of transactions in a business enterprise involves three main functions: operating, custody, and accounting. Custody in many instances necessarily accompanies operations. The person preparing the bank deposit obviously must have custody of cash. No group or individual, however, should control the accounting records of its own operations. Otherwise, there is no reliable way of determining proper discharge of accountability. When these functions are separated, the performance of one individual or group can serve as a check on that of another.

A good system of internal control for cash should provide adequate procedures for protecting both cash receipts and cash disbursements, and, in these procedures, three basic principles should always be observed. First, there should be a separation of duties so that the people responsible for handling cash and for its custody are not the same people who keep the cash records. Second, all cash receipts should be deposited in the bank, intact, each day. Third, all disbursements should be made by check.

The reason for the first principle is that a division of duties necessitates collusion between two or more people if cash is to be embezzled and the theft concealed in the accounting records. The second, requiring that all receipts be deposited intact each day, prevents an employee from making personal use of the money for a few days before depositing it. And, requiring that all receipts be deposited intact and all disbursements be made by check provides a separate and external record of all cash transactions that may be used to prove the court's own records.

The word "intact" means that no withdrawal or substitution of checks or currency should be made before deposit. Each cash item received should be promptly deposited without alteration or exchanging of transactions.

Good cash control, as previously stated, requires a separation of custody for cash from record keeping for cash. The idea of two employees being responsible for the court's funds should be adhered to where possible. Simply stated, the person who actually takes in the money and writes the receipt

should not be the same employee who enters the receipts on the cash and fee ledger. In courts where this practice is impossible due to the size of the staff, two people should be involved somewhere in the process. If the bookkeeper takes the money and posts the cash ledger, someone else should make up the deposit or balance the bank statement at the end of the month.

As a matter of procedural compliance, it may not be practical, in a smaller court office, to comply with all phases of internal control of cash. In the case of a "one person" court, the Presiding County Judge should acquaint himself with the manual and possible consequences of control loss.

The receiving of cash should be centralized as much as possible in each court. Most courts will be able to operate from one cash drawer located at the counter area. The present facilities of the court will be a determining factor in this arrangement. If more than one cash drawer is maintained, each drawer should be balanced to the receipts written against that drawer before combining the two drawers for deposit or storage at the end of the day.

The cash register or receipt book should be located so that the customer can observe the amounts being recorded. Hopefully, no receipts are being written inside the courtroom while court is in session. To a limited degree this will be unavoidable due to the fact that a few courts are being operated by one person. Where sufficient staff permits,

every effort should be made to avoid the practice of writing receipts in the courtroom. This does not include those cases that are paid by waiver in the Judge's Office.

A receipt should be written as soon as possible. Waivers received through the mail with cash and checks enclosed should be receipted as soon as the complaint is filed.

4. CASH DISBURSEMENTS

To gain control over cash disbursements, all disbursements should be made by check. If authority to sign checks is delegated to some person other than the Judge, that person should not handle all the transactions from receipt to disbursement. This helps prevent a fraudulent disbursement being made and concealed in the accounting records.

All checks should be pre-numbered by the printer or bank and should be entered on the cash and fee ledger in numerical order as they are written. This makes it possible to scan the numbers in the Check Number column for omitted checks. If a check is spoiled in writing, it is a good practice to enter the check on the Cash and Fee Ledger in numerical order with the words "Spoiled Check" in the Payee column and no amounts in the money columns. The spoiled check is then marked "void" and is attached to its check stub or kept with the other cancelled checks for that month.

5. STORING MONEY IN THE COURT

Every court from time to time will have money that must be stored in the court area prior to depositing it in the bank.

Vaults and safes are generally the areas used for storing the day's receipts.

Every county court should have a storage area that is locked by means of a dial combination. Never store money in a file cabinet even though it can be locked. Likewise, never store money in any container to which access can be gained by the use of a key. Be sure your vault or safe works.

Combinations to vaults and safes should be changed if one of the following events occur:

1. Employee knowing the combination leaves the employment of the court.
2. Three years has lapsed since last combination change.
3. The combination has been compromised. (Unauthorized person gains access to the combination.)

The vault combination should only be given to court employees who have a need to its access. A copy of the combination numbers should be sealed in an envelope and placed in the County Treasurer's vault. Never store the combination numbers in the court area.

6. CASH CONTROL SUMMARIZATION

- a. Do not permit any one employee (except in the case of the Associate Judge) to handle a transaction from beginning to end. Another exception to this rule is where existing staff consists of one employee.
- b. Deposit each day's cash receipts intact.
- c. Separate cash handling from record keeping.
- d. Centralize receiving of cash as much as possible.
- e. Locate cash registers or cash drawers so that customers can observe amounts recorded.
- f. Record cash receipts immediately.
- g. Make all disbursements by check.
- h. Have bank reconciliations performed by employees not responsible for the issuance of checks or handling of cash.
- i. Store cash only in a vault or safe.

3. BALANCING CHECKLIST

Should you fail to balance at the end of the day, the following is a checklist of procedures to try to find the error:

- (a) Recount all checks and cash.
- (b) Recount all receipts.
- (c) Check receipt numbers to see if any are missing.
- (d) Check receipt totals against all transactions that day.
- (e) If personal checks were taken in, compare check amount and receipt written.
- (f) If cash and fee sheet is already posted, re-add all columns vertically and horizontally.
- (g) Try to identify amount of error to a specific transaction, i.e., if the error is \$5.00, check marriage licenses; if it is \$1.00, check judge's retirement or LEIF, etc.
- (h) If a previous deposit is made up and not yet delivered to the bank, recount the deposit to see if it's long or short.

If you are still unable to locate the error, another employee should go through the checklist; sometimes we are prone to make the same error no matter how many times we repeat the balance. Also, don't overlook the waste basket; receipts and checks have been known to be inadvertently thrown away. Also, try to recall each individual transaction.

If you have recovered an insufficient fund check recently, don't re-add that money into the day's deposit. That money has already been accounted for and you should make up a separate deposit to get your bank statement back into balance.

MENOMINEE

TRIBAL COURT

"ONE-WRITE" ACCOUNTING SYSTEM

Accounting Procedure

Introduction

The revised procedure incorporates the use of a "one write" accounting system which represents a significant change from traditional court accounting processes. The one write system typically costs less than current accounting books, forms, and other supplies; reduces the personnel time required for accounting functions; and provides greater accuracy than traditional accounting methods.

The one write system uses a board with pegs along the left side as the sole piece of equipment. All accounting forms have slots that fit the pegs on the board. Accounting forms which will be used in the one write system include journals, receipts, special account ledger cards, a bond ledger card, and a deposit summary and transmittal.

The unique part of the system is that multiple forms relating to the same transaction, such as receipts, special account ledger cards, bond ledger cards, and the journal are designed so that column headings (date, name, case number, amount, etc.) correspond on all forms. This permits the entry of information on multiple forms with a single impresssion. For example, in receipting, when the appropriate information is written on the receipt, the impression is simultaneously recorded on the journal through the use of strip carbon backing. In receiving trust monies, such as for bonds,

restitution or support payments, information is transcribed onto an individual special account ledger card while also producing the receipt, and a chronological entry on the journal.

In addition to the basic identifying information which is contained on all accounting forms (e.g., date, name, case number, amount, etc.), the journal includes distribution columns for recording the breakdown of money received. After a receipt is prepared, funds received should immediately be recorded under one or more columns to indicate portions of the money to be allocated to the appropriate account(s). A deposit summary and transmittal keeps track of all deposits by the court. This will enable the tribal accounting office to more easily account for court generated revenues and identify the amount being held in trust.

The use of the one write accounting system simplifies traditional recordkeeping for the accounting function and offers the following advantages:

1. Reduces personnel time. The one write system can save as much as 75% of clerical time compared with that required for maintaining traditional accounting records. Time savings generally result because an entry can be made on multiple records with only one impression and because all records are in close proximity and easy to handle.

2. Reduces or eliminates transcription errors.

Traditional court accounting systems require that one record be created from another. Even when the original receipt is used to create all of the records, there is still some potential for error when the information is transcribed. With the one write accounting system, the information transcribed onto subsequent records is exactly the same as the information written on the original receipt, journal, special account ledger card, etc.

3. Reduces cost. The one write system costs approximately \$25 for each "pegboard" and no more than the present cost for other forms. The annual cost compares favorably with the cost for traditional accounting books, receipts, journals, and other accounting records. The greatest savings, however, is achieved through a substantial reduction in clerical time.

4. Reduces training time. The one write accounting system is easy to learn and operate. No extensive bookkeeping experience is needed by individuals who record most information in the system. (However, one person should be experienced in policies governing the tribal accounting system and the methods for managing various accounts.)

5. Produces up-to-date records. With traditional accounting systems, receipts may not be posted to the individual accounts or cash journals until later in the day, week, or month. With a one write accounting system, all records are up-to-date immediately and their current status can be accurately determined. This simplifies the reconciliation process and reduces the amount of time required for tracing errors. Daily or weekly balancing can be accomplished quickly which will substantially reduce the traditional reconciliation and reporting burdens.
6. Reduces auditing time. Since the one write accounting system provides for the transcription of information to multiple records with one impression, an auditor need not trace each location where information is transcribed.
7. Provides for payment monitoring. The one write system provides for the creation of special account ledger cards for support, time to pay fines, and restitution. Entries of periodic payments are made to the individual account card at the same time as the receipt is written and recorded on the journal. Individual account cards are maintained in a tickler system so that support arrearages can be updated on a current basis and action taken on overdue payments for fines and restitution.

Organization of the Accounting System

1. Journals

The case-related accounting of the Clerk's office involves three different types of accounts:

1. Money which is received as revenue from the payment of fees and fines. This money is transmitted to the tribal accounting office for use later by the tribe.
2. Money is deposited with the Clerk's office for safekeeping pending the outcome of a court matter, usually in the form of a cash bond to guarantee the appearance of a defendant in court.
3. The third type of money handled by the Clerk is money which is paid into the court and also disbursed by the court through the tribal accounting office in accordance with a court order for support, restitution, or proceeds of a judgment in a law suit.

The Menominee one write accounting system will make use of one journal for receipting. The receipting journal will record the payment of all monies coming through the Clerk's office for whatever purpose. Under this system, the fund balance calculation will remain in the tribal accounting office, but their work will be streamlined by receiving a copy of the receipts journal from the court with the amount already broken down by category. Payments for restitution and support will be

tracked on the special account ledger cards for each such account.

The accounts contained on the receipts journal are as follows:

- | | | |
|---|---|---------|
| 1. Fine & Forfeiture (303) | } | Revenue |
| 2. Costs | | |
| A. civil | | |
| B. criminal | | |
| 3. Filing Fees (304) | | |
| A. civil filing fee | | |
| B. service | | |
| C. withdrawal | | |
| D. civil appeal | | |
| E. criminal appeal | | |
| 4. Other (305) | } | Trust |
| Fees and charges | | |
| 5. Jury demand (CR 402) | | |
| 6. Due To: Courts (Misc. Receipts) CR 207 | | |
| 7. Cash bond (206) | } | Trust |
| 8. Child Support (201) | | |
| 9. Restitution (202) | | |
| 10. Wage Garnishment (204) | | |

2. Receipts

Pre-numbered receipts will be created at the same time as the entry is made on the journal to record the receipt of funds. Receipts should be made for the individual(s) involved in the case and not for the law enforcement agency which may transmit a cash bond to the court. If they require an acknowledgment for transmitting these funds, it should be

annotated on the transmittal document or a receipt separate from the one write system.

3. Deposits

The one write accounting system provides for a detailed listing of all monies receipted by furnishing the tribal accounting office with a duplicate copy of the receipts journal created by a carbonless paper process. A summary of receipting activity will be recorded on a deposit transmittal when funds are sent to the central cashier.

4. Special Account Ledger Cards

A special account ledger card will be created and used when posting time payments for fines, and when accounts are set up for the payment of court-ordered support and restitution. There are other possible uses for the special account ledger card such as in the creation of trusts and minor settlement accounts. However, the Menominee Tribal Court presently does not get involved in such transactions; therefore, they will not be addressed at the present time.

5. Cash Bond Ledger

The cash bond ledger form will keep track of each cash bond deposited with the court and its subsequent disbursement through forfeiture, refund, or a combination of the two disbursement alternatives. The present method of keeping track of these accounts relies on referencing the case file.

6. Disbursements

The one write accounting system can accommodate the preparation of a check along with the simultaneous entry of the

disbursement on the journal. However, at the present time, the Menominee Court does not write checks, but rather prepares payment requests for funds needing to be disbursed by the tribal accounting office from the court fund. Therefore, the system presently used should remain as the procedure for disbursements. When payments for bond refunds, child support, etc. are needed out of the normal bi-monthly check writing cycle, the court should not have to prepare a lengthy "order" as is the practice at the present time.

7. Deposit Transmittal and Summary

The deposit transmittal and summary will provide information on the breakdown of the deposit among the various accounts, inclusive receipt numbers used during the reporting period, and the total being forwarded to the tribal accounting office.

CHART OF ACCOUNTS

<u>Account Number</u>	<u>Account Title</u>
1	Fine/Forfeiture (303). This account is for all fines imposed by the court in criminal and traffic cases (including juvenile criminal and traffic matters).
2	Costs. (Not presently allowed for.) A. Civil. This account is for costs imposed by the court in civil actions. B. Criminal. This account is for costs imposed by the court in criminal actions.
3	Filing fees (304). A. Civil filing fees. B. Service. Fees paid by attorneys or other jurisdictions for the service of process on the reservation.

- C. Withdrawal fees. The fee charged for withdrawing a complaint.
- D. Civil appeal.
- E. Criminal appeal.

4. Other. Fees and charges (305) Any other fees paid into the court for items not covered in A through E above which will be deposited in the court fund account.

5. Jury fees. (CR 402) Fees paid by litigants when a jury demand is made.

6. Due To: T. Courts (CR 207).

Miscellaneous receipts for use of photocopier, etc., unrelated to the work of the court.

7. Cash bond (206).

This account records monies deposited as cash bonds by criminal defendants to ensure their presence in court. This is a liability account and cannot be considered part of the revenue of the court until forfeited or converted to a fine since court action may require a refund of the entire sum or a portion of it.

8. Child Support (201).

This account is for money paid through the court for court-ordered support payments.

9. Restitution (202).

This account is for money paid to the court for court-ordered restitution or judgments resulting from a court case.

10. Wage Garnishment (204).

This is another type of judgment payment also called a garnishment action in which judgment debtors employer is required to pay from the debtor's salary periodic amounts towards the satisfaction of the judgment.

D. PROCEDURE

The accounting system is divided into four basic functions:

1) receiving and recording funds which flow into the clerk's office; 2) disbursement of funds to individuals; 3) preparing deposits; and 4) journal closing.

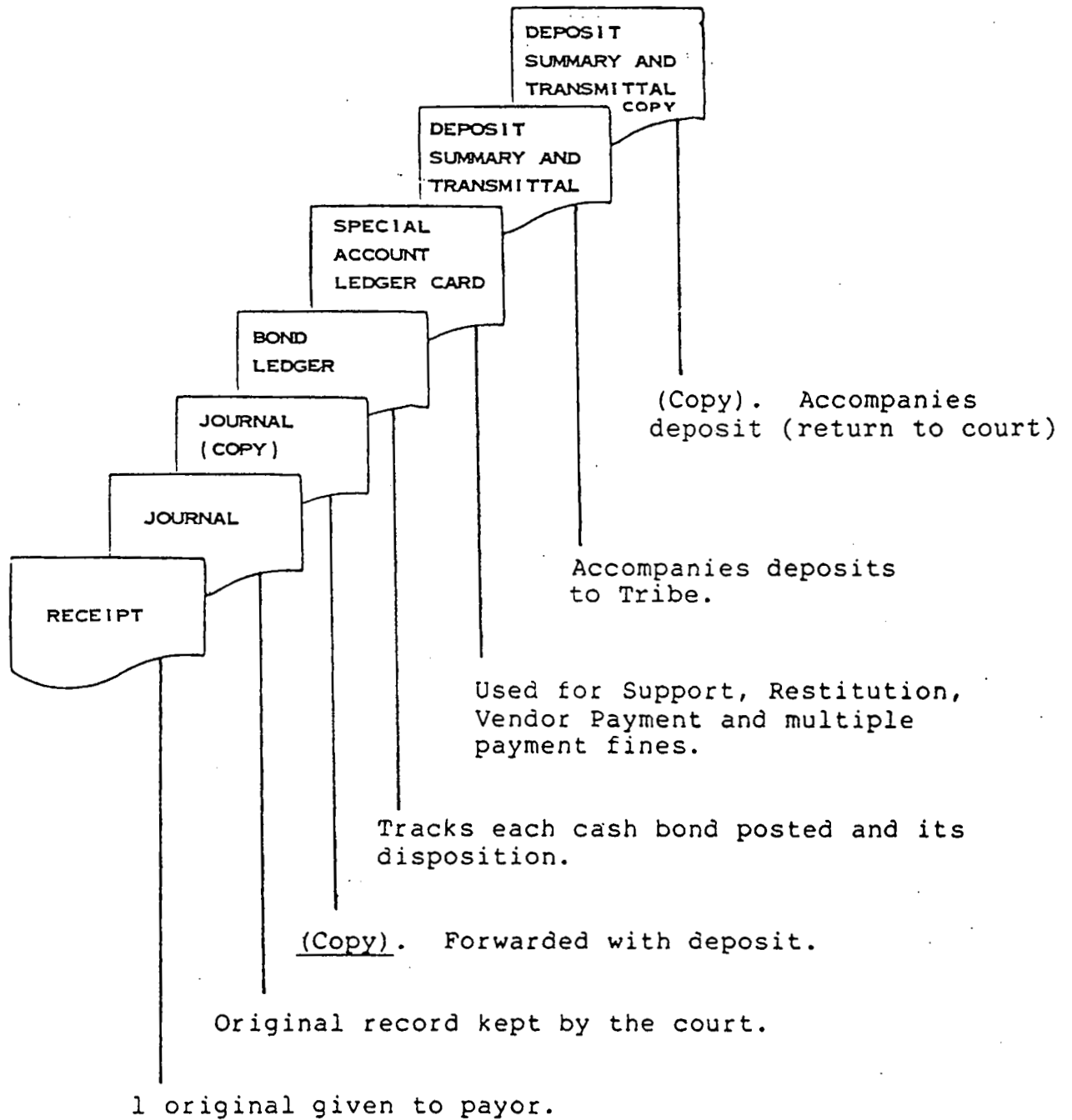
The first procedure, Receiving and Recording Funds, is accomplished through the use of a receipts journal, and ledger cards. The second procedure, Disbursements, is performed periodically throughout the month and involves the payment to individuals for such items as support payments, restitution, and vendor payments. This is accomplished by an entry to the appropriate special account ledger card and preparation of a payment request.

The third procedure, Deposits, involves the daily summarization of the receipts journal, the comparison of the journal figures with actual receipts, and the preparation of the deposit transmittal to the tribal accounting office.

The fourth procedure, Journal Closing, is performed monthly and is accomplished by: 1) capturing the month-end totals of each account from the daily journal sheet, and 2) calculating the ending balance each account.

The following will discuss how these procedures are performed using the accounting forms developed for the one-write system.

MENOMINEE PROPOSED ACCOUNTING SYSTEM CHART



RECEIVING AND RECORDING FUNDS

This section will describe how: 1) receipts are created; 2) payments are posted to journal accounts; and 3) payment and disbursement activity is recorded on special account ledger cards for account payments and bail.

1. RECEIVING FUNDS

The basic procedure used in receipting for funds involves the overlay of a carbon-backed receipt onto the journal and the entry of the information on the receipt. When the appropriate information is written on the receipt, the impression is simultaneously recorded on the journal. The recorded information is identical on both documents. If the received payment includes bond monies or funds to be distributed to a payee (i.e., support, restitution, garnishments), separate special account ledger cards need to be inserted under the receipt. See Section 2.1 below for additional description of this procedure. The procedures to be followed in preparing a receipt are described below. (See Exhibit 1.)

- 1.1 Position receipt on the pegboard so the receipt entry lines are immediately over the next available journal entry line.
Note: The first line of each journal page is preceded by an "F" - this line is reserved for forwarding the balance from the previous journal page. Also, the last line on each page is preceded by a "T". This line is used to total the receipts listed on the page.

- 1.2 Enter the DATE on which the transaction occurred.

- 1.3 Enter the name of the person making the payment in the RECEIVED FROM space.

- 1.4 Enter the initials of the clerk receiving the payment in the RECEIVED BY space.

MEMPHIS RECEIPTS JOURNAL

Month Year

MEMPHIS RECEIPTS JOURNAL				COURT FUNDS										COURT DISTRIBUTED FUNDS				
Date	Received From	Rec By	Receipt Code	Receipt Number	Case Number	Pynt Code	Amount Received	1. Fees (305)	2. Costs (305)	3. Fees (402)	4. Other Fees (305)	5. Jury Fees (402)	6. Due to T. Ct. (OR 207)	7. Cash Bond (206)	8. Child Support (201)	9. Restitution (208)	10. Garn. (204)	REMARKS
F																		
1																		
2																		
3																		
4																		
5																		
								<p>MEMPHIS TRIBAL COURT</p> <p>Receipt Codes:</p> <p>1. Filing Fees A. Civil B. Service C. Withdrawal D. Civil Appeal E. Criminal Appeal 4. Other Fees 5. Jury Fees</p> <p>6. Due to T. Courts 7. Cash Bond 8. Child Support 9. Restitution 10. Mega Guiltments</p> <p>Receipt By: _____</p> <p>Phone: _____</p> <p>Receipt X X X X X</p> <p>C = Cash ✓ = Check B = Both</p>										
								<p>TOTAL DEBIT</p>										

The Memminer tribe is hereby authorized and instructed to issue checks for the amounts noted in columns 8, 9 & 10 above to the payees noted on the attached copies of SPECIAL ACCOUNT LEDGER CARDS

ORDER TO PAY OUT COURT DISTRIBUTED FUNDS

Judge

- 1.5 Enter the RECEIPT CODE(S) designating the reason(s) for payment.

The receipt codes to be used are listed on the bottom portion of the receipt. These codes correspond to the column numbers on the journals and tell the receiving clerk the appropriate account(s) to which the money should be posted on the journal. When more than one receipt code is appropriate (e.g., a receipt which includes fine and costs) all appropriate receipt codes should be entered on the top of the receipt in the receipt code space.

- 1.6 Enter the RECEIPT NUMBER which is the pre-printed consecutive number appearing on each receipt.
- 1.7 Enter the CASE NUMBER associated with the payment.
- 1.8 Enter the PAYMENT CODE which indicates the type of funds received. If cash is received, enter "C"; if a check is received, enter " ", and if both cash and a check are received, enter "B". When a combination of cash and check is received for a single payment, enter the amount of cash received under the "Remarks" column.

- 1.9 Enter the total AMOUNT RECEIVED.

- 1.10 Tear off the receipt, sign it, and give it to the person making the payment. When the payment is mailed in, the receipt should only be returned to the payor if a stamped envelope is sent with the payment. If not, the receipt should be thrown away. Receipts for bond money collected by the Police can be given to the defendant if still in custody or present in the court or thrown away.

At this point in the receiving process, the receipt and the journal contain the same information.

- 1.11 If the payment is the last payment on the case, note that full payment has been made in the court file.
- 1.12 When money is received from the police, make a separate receipt for each individual case and give the receipt to the police.

2. RECORDING FUNDS TO JOURNAL ACCOUNT COLUMNS

After entering the receipt information described above, the next step involves the posting of these monies to the appropriate account(s) noted to the right of the receipt line.

When monies are received and entered on the journal as described above, the entry to the "AMOUNT RECEIVED" column must be posted to one or more of the accounts appearing to the right of the journal. This posting will show how the money received will be credited or disbursed.

- 2.1 After the receipt has been completed and given to the paying party, the court clerk records the specific amounts of money received for any of the listed accounts noted to the right of the receipt entry area. The account codes for each payment should have been noted under the RECEIPT CODE column. A listing of the definitions for each account code is found on the receipt.

Every effort should be made to record the specific amounts (making up the total payment) before the party leaves the counter. Otherwise, the clerk will have to refer to the court order or instructions. Do not delay in making the required distribution entry.

- 2.2 Check that the total of the amount(s) posted to the account column(s) to the right of the AMOUNT RECEIVED column are equal.

3. USE OF ACCOUNT LEDGER CARDS

When money is received for a support payment, restitution, garnishments, installment payments of a penalty, etc., a SPECIAL ACCOUNT LEDGER CARD must be used when the receipt is prepared.

See, Exhibit 2.

- 3.1 A separate SPECIAL ACCOUNT LEDGER CARD must be prepared at the time payments are approved or ordered by the court, for each person making scheduled payments to the court. The top portion of the card must be completely filled out at the time the court enters the payment order. Use a BOND LEDGER CARD for persons filing a bond with the court. The required information includes the following items:

- The name, address and phone number of the person ordered to make the payment to the court;
- Name, address and phone number of the payee (the person to receive the money);

- The type of account should be checked in the provided boxes;
 - The case number;
 - The date when the court entered the order; and
 - A description of terms and conditions of the payment order. (A payor should be instructed to make all payments by check or money order if the payment is to be mailed out to the payee.)
 - The Payor must sign the Payor acknowledgement at the bottom of the LEDGER CARD before he leaves the court.
- 3.2 After the SPECIAL ACCOUNT LEDGER CARD has been prepared as described in section 3.1 above, it should be filed alphabetically by the Payor Name by type of account.
- 3.3 A BOND LEDGER is not prepared in advance of a bond being paid to the court. The BOND LEDGER is used to record all bonds in sequential order.
- 3.4 When a payment is made on a special account, the Payor's SPECIAL ACCOUNT LEDGER CARD is removed from the alpha file and inserted under the RECEIPT FORM. The next line on the SPECIAL ACCOUNT LEDGER CARD should be aligned against the pegs so that the columns and next available line on the journal are lined up. See, Exhibit 2. Since the columns on the LEDGER CARDS are (identical with those on the RECEIPT and the JOURNAL, the information recorded on the RECEIPT will transfer to the appropriate column on the LEDGER and the JOURNAL.
- 3.5 When a payment is received for child support, restitution, etc., the money is paid through the court for transfer to another individual. Action should be taken when the payment is made to effectuate check preparation by the tribal accounting office. Therefore, the payment request procedure should be followed on the same day the payment is received. See, 5.10 below for description of procedure.
- 3.6 When the receipting process is completed for a SPECIAL ACCOUNT, remove the LEDGER CARD from the pegboard and enter the AMOUNT DUE on the LEDGER CARD.
- 3.7 When a cash bond is received (either from an individual or the police), place the BOND LEDGER CARD (See Exhibit 3) under the receipt and align line 1 of the next bond entry section with the receipt and next line on the journal. The police will bring all cash bonds collected by them to the court each morning. Receipts should be prepared by the court just as if the individual was appearing before the court. The system works the same as for the Special

BOND LEDGER							Year	No
Date	1. Received From (Name & Address)	Rec or Ref By	Receipt Code	1. Receipt No	Case Number	Pymt Code	1. Amount Received	
	2. Court Disposition						2. Amount of Fine or Forf.	
	3. Refund Voucher No.			3. Refund Check No.			3. Amount Refunded	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	
	1.			1.			1.	
	2.						2.	
	3.			3.			3.	

Account Ledger card in that all receipt columns are the same on the Bond Ledger card. Lines 2 and 3 will be used later for final disposition of each bond.

- 3.8 The NAME/ADDRESS/PHONE NUMBER of the defendant should be handwritten in the remaining space on line 1 of the BOND LEDGER after it has been removed from the one-write pegboard.
- 3.9 All LEDGER CARDS (except the BOND LEDGER) should be refiled alphabetically by type of account if there are future payments to be made. SPECIAL ACCOUNT LEDGER CARDS should not be refiled until after the daily deposit is prepared (see 5.11 below). The BOND LEDGER is refilled in sequential order with the other completed BOND LEDGERS.
- 3.10 When the total amount due on a SPECIAL ACCOUNT has been paid, remove the LEDGER CARD from the open alphabetical account file and file the LEDGER CARD alphabetically in the annual closed ledger card file. A notation should be made in the court file when an account has been fully paid.

PRESENT TRIBAL ACCOUNTING PROCEDURES

At the end of each day the bailiff or court clerk brings one copy of the receipts and cash to the central cashier's office at the tribal offices. The tribal central cashier checks the numbered receipts order and then checks the total amount of cash against the receipt. The central cashier then gives the bailiff or court clerk a receipt which states the number of the receipts, (i.e., receipt number 1092-1101) and the amount. Money and receipts must balance or the central cashier will not accept the money from the court.

The tribal central cashier then takes the money upstairs to the tribal accounting office. The central cashier must present an accurate account to the tribal accounting office (i.e., receipts and cash must balance). The tribal accounting office accepts the cash, but does not give the central cashier a receipt.

The tribal accounting office prepares the court money for deposit by filling out a deposit ticket, broken down by amount of cash, checks, and money orders. The court money is then deposited in the tribe's "general services account." It does not draw interest. Funds in the general services account are distinguished by ledger. A separate ledger is kept for court monies.

After accounting determines from the general services account those monies that are revenue to the tribe, that money

is transferred to the tribe's "reserve account". Reserve account money is then tribal money to be spent however the tribal legislature wishes. The trust-type monies are left in the general services account to be disbursed as the court orders or designates in requests for payment. (Tribal accounting stated that because of their inability to distinguish between court revenue and court funds, all funds are now left in the general services account.)

In order to withdraw money from the general services account, the court clerk of bailiff (usually the bailiff) must present to the accounting office a "request for payment" and a copy of the receipt. Payment requests are turned in on the 10th and 25th of each month. The accounting office then prepares a check out of the general services account, made out to the individual. The accounting office mails the check directly to the individual. In cases where the money is wanted immediately, the court sends over an order for payment, in which case the accounting office prepares a check and sends it back to the tribal court who disburses it to the individual.

The accounting office provides a "monthly budget report" each month which shows total court revenue.

Court expenditures are not paid from the general services account. Money for court expenses comes from the BIA appropriation account. The procedure for expenses out of the BIA appropriations account are:

- the court personnel are required to submit timesheets for salary expenses;
- for supplies and other expenses, the court must submit a request for payment along with an invoice or some sort of backup proof of the expense.

The accounting office issues a check to the appropriate individual or company in payment.

A separate manual ledger is kept on the BIA account and this account is entered into the tribe's computerized accounting system.

DEPOSITS AND ADJUSTMENTS TO THE COURT FUND

Each day, the money received by the clerk's office should be deposited with the Tribal Accounting Office and journals reconciled to verify that all entries recorded during the day are correct. The following describes the deposit preparation and journal reconciliation processes.

5. PREPARATION OF DEPOSITS

Deposits are calculated by adding all the entries made to the various columns of the receipt journal and comparing the total of those columns with the checks and cash actually received. See journal (Exhibit 1).

- 5.1 Enter the date of the deposit in the date column of the journal on the "T" line.
- 5.2 Under the "Received From" column, enter "Tribal deposit."
- 5.3 Compute the total of the entries in the amount received column since the last deposit (total down the page or pages).

- 5.4 Enter the total computed above in step 5.3 in the "Amount Received" column and place brackets around the figure to show it as a deduction. Brackets () indicate a deduction and since the journal is zeroed out with each deposit the brackets are used to highlight this transaction.
- 5.5 Add the totals of the amounts entered in columns 1 through columns 10 and enter them on the same line in brackets. Add the subtotals for each column and assure that they are the same as the total in the amount received column.
- 5.6 Add the totals of columns 1 through 10 and compare that total with the total entered in the "Amount Received" column.
- 5.7 Using an adding machine with a tape, compute the total of the cash and checks and compare with the total of the entries posted for the day to columns 1-10 on the journal.
- If the total of the cash and checks do not equal the amount of columns 1-10, it means an error was made some place in posting. Errors must be corrected before the deposit slip is prepared and before posting for the next business day.
- 5.9 Prepare (original and copy) of the DEPOSIT SUMMARY AND TRANSMITTAL form (Exhibit 4) by entering the inclusive dates of the receipts, inclusive receipt numbers covered during the period, sub-totals for each column and deposit grand total. The Journal Copy is also attached to document the receipt detail. This transmittal should be prepared in 2 copies, (1-tribal accounting office with Journal attached, and 2-Court).
- 5.10 If any funds were collected by the court for child support, garnishments, or restitution a judge should sign the order at the bottom of the JOURNAL instructing the tribe to pay out the received moneys to the required PAYEES.
- 5.11 A court clerk should make copies of the top portions of the SPECIAL ACCOUNT LEDGER CARD used during the day (for payments received) and attach copies to the daily deposit. These copies provide the tribe with the names and addresses of PAYEES that are to receive "pass through" monies.

DEPOSIT SUMMARY AND TRANSMITTAL

Deposit No. _____

TO:

1. COURT FUNDS COLLECTED BY THE MENOMINEE TRIBAL COURT AT KESHENA,
WISCONSIN, WISCONSIN.

Period _____ Receipt No's. _____

Name and Number

- | | |
|---------------------------|----------|
| 1. Fines (303) | _____ |
| 2. Costs | _____ |
| 3. Fees (304) | _____ |
| 4. Other Fees (305) | _____ |
| 5. Jury Fees (402) | _____ |
| 6. Cash Bond (206) | _____ |
| 7. Child Support (201) | _____ |
| 8. Restitution (208) | _____ |
| 9. Garnishment (204) | _____ |
| 10. Due to T. Ct. CR 207) | _____ |
| *Total Deposit | \$ _____ |

Collected by: _____

Date Forwarded	By (Clerk of Court)	• No. of Checks _____ • Amount _____ \$
----------------	------------------------	--

Date Received (Subject to Collection)	By (Cashier)	Receipt No. _____
---	-----------------	-------------------

Date Received (Tribal Accounting Office)	By ()
--	-----------

Proposed Deposit Transmittal Form
August, 1982

ADJUSTMENTS TO THE BOND ACCOUNT

Money collected by the court as a bond cannot be used by the court or tribe unless it is forfeited by the court. The remaining funds must be either held in trust by the tribe or refunded to a party upon order of the court. The following describes the procedures to be followed when adjustments are made to the bond account.

- 6.1 When the court makes a determination to refund and/or forfeit a bond, the court must notify the tribe (and make the appropriate notations on the BOND LEDGER CARD).
- 6.2 If the court wishes to prepare separate orders (present practice), the court should also include in the order specific reference to what amount should be forfeited. The tribe should then transfer any forfeited bond money from the bond account to the court fund (general revenue). Refunds would continue to be paid to a party by a check. Amounts refunded or forfeited should be deleted from the BOND ACCOUNT balance.
- 6.3 IN THE ALTERNATIVE the court could eliminate the use of a separate order and use only a "CHECK REQUEST" form (modified) See, Exhibit 5.
- 6.4 If the REQUEST FORM is used the court should note the amount due as refund and/or forfeiture. The two (2) amounts should add up to the total amount of the bond. One copy of the REQUEST FORM would be sent to the tribe and the original keep in the court file in place of the court's present order.

EXHIBIT 5

MENOMUNEE INDIAN TRIBE OF WISCONSIN
CHECK REQUEST and/or REFUND.

DATE: April 15, 1982

PAYABLE TO: Louis Hawpetoss

ADDRESS: Keshena, WI 54135

AMOUNT DUE: \$45.00 (check) and \$38 (forfeiture)

PROGRAM: Fines & Fees

ACCOUNT #: #301

EXPLANATION: Balance of cash bond refund / from Stephen Teller Jr.
to be forwarded to Defense for Counsel,

Louis Hawpetoss

Robert L. Shubert
APPROVED BY:



5.

JURY SYSTEM

MENOMINEE
TRIBAL COURT
JURY SYSTEM MANUAL

Recommended Jury Procedures
Not Defined by Code, CFR, or ICRA

The National Center for State Courts has drafted forms and procedures for implementation of a jury system which conforms to the Menominee Tribal Code, Title 25 Code of Federal Regulations and the 1968 Indian Civil Rights Act.

Neither the Code of Federal Regulations or the Indian Civil Rights Act contain any specifications for jury systems, even though both give a right to jury trials. The Menominee Interim Law and Order Code contains some general requirements. Thus, in drafting procedures and forms for a jury system, it was necessary for the National Center to make some substantive assumptions pertaining to a jury system. These assumptions will be outlined below for the court's consideration. They have already been included in the procedures. Should the court not wish to adopt them, they can be easily deleted.

1. Excuse and Disqualifications

Disqualifications:

Neither 25 CFR or ICRA define acceptable reasons for disqualification, and the tribal code requires that you be a tribal member, resident of the reservation between ages 18 and 70, not be convicted of a felony, and not currently a judge or employee of the court. The Center has included another reason for automatic disqualification from jury duty--that the person not be currently a member of the tribal council.

Disqualifications are automatic. That means a person, if he fits any one of the reasons for disqualification may not serve on the jury even if he wishes to. The reason for disqualifying such persons as council members, judges or attorneys is that they may be unduly persuasive on a jury simply because of their position. This is especially true in a smaller community such as the Menominee reservation.

Convicted felons are sometimes believed to have a bias against the court and for defendants on trial. However, once a convicted felon has completed his sentence or parole, he is deemed to have paid his debt to society and have been rehabilitated into society and should be allowed to serve on a jury.

Excuse:

Neither 25 CFR, ICRA or the Interim Law and Order Code define permissible reasons for excuse from jury duty. The National Center has included three categories of excuses.

Eligible persons who are summoned may be excused from jury service only if:

- 1) Their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors.
- 2) Service would be a continuing hardship to them or to members of the public.
- 3) They have been called for jury service during the one (1) year preceding their summons.

Typically, the judge considers each request for excuse on an individual basis. The Draft ABA Jury Management Standards

in Appendix B of the manual recommends that automatic excuses be eliminated. Examples of permissible excuses which the court may want to consider are: poor health or physical disability which makes it extremely inconvenient for the person to serve, (i.e., a wheelchair bound person, if court facilities are not adapted for the handicapped).

Excuses are not automatic, but must be requested in writing. The judge in considering whether to grant excuses should adhere to a strict policy in order to ensure consistent and fair treatment of all persons. Excuses should not be granted lightly.

2. Procedure for Civil Jury Trial

The Rules of Procedure for use in Civil Jury Trials, § A and (B), authorize jury trials in civil cases; however it makes no specifications for jury trial procedure. The court may wish to examine the section in the manual on civil trial procedure and adapt or delete individual procedures.

3. Jury Selection Procedures

Jury selection procedures were not defined in 25 CFR, ICRA or the Menominee Tribal Code. The National Center drafted procedures that in its estimation best fit the needs of the Menominee Court.

For instance, the Center recommends selecting 15 jurors in the initial draw. Drawing 15 should provide enough jurors for

the required six person jury.* This allows for three peremptory challenges for each side (6 total) and three challenges for cause (3 total). If the court should consistently find that it needs either more or less jurors to get a panel of six, it should decrease or increase the number in the initial draw appropriately. Consistently, calling too many jurors creates unnecessary expense for the court.

Secondly, a method of selection is not defined. The Center has recommended a random start/fixed interval procedure. It is one of the recommended procedures in the Draft ABA Jury Management Standards. It ensures that selection will be truly random. See the section on drawing a jury panel for an explanation.

4. Juror Payment

The Menominee Code provides only for payment to jurors who actually serve on juries. The Center has recommended that jurors who are called and report, but are not selected to serve, also be reimbursed.

* Menominee Interim Law and Order Code, Chapter 5, § 1-5-3(1), requires the clerk to subpoena not less than 12 persons.

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INTRODUCTION

The following manual has been prepared by the National Center for State Courts for the Menominee Tribal Court in compliance with the Menominee Tribal Code, Title 25 Code of Federal Regulations, and the 1968 Indian Civil Rights Act.

This manual contains recommended instructions and forms necessary to provide jury trials at the Menominee Tribal Court. Masters of forms necessary are included so that the jury system can be implemented immediately and without the additional cost or time of ordering forms. The court need only copy forms on their own machine as needed, also saving storage space.

Necessary procedures are documented step by step, so that minimal training is needed for implementation and to ensure consistent continuing practices through judicial or clerical staff turnover.

The Trial Juror's Guidebook is provided for the information of the jurors. It provides general information about the court, types of trials, trial procedure, legal terminology, and the role of jurors in a trial. Providing the jurors with a guidebook should save the judges and clerks administrative time in educating and answering questions for jurors. It should also by explaining the process to them, give jurors more confidence in their roles. See Appendix A for the Trial Juror's Guidebook.

JURY TRIALS

I. Right to a Jury Trial

A. Criminal Cases

Jury trials must be provided upon the request of the defendant for any offense punishable by imprisonment. (See, Indian Civil Rights Act § 1302 (10).) The jury must consist of not less than six persons. The Menominee Tribal Code, Chapter 8, § 1-8-1(f) guarantees the right to a speedy and public trial.

B. Civil Case

In civil cases, a jury must be provided when requested by any person, or in any suit at his own expense (Menominee Rules of Procedure for use in Civil Jury Trials, § A). There is a right to a jury trial in all cases involving a claim with a value of \$500 or more (§ B). Persons entitled to a jury trial must file a written demand with the clerk of court no less than 10 days after the answer is filed.

II. PROCEDURE FOR DRAWING A JURY PANEL

A. Compiling a List of Eligible Jurors

1. Code Requirements

The Menominee Tribal Code, Chapter 5, § 1-5-2, requires the Chief Justice to prepare a list of eligible jurors each year.* The Tribal Code in Chapter 5, § 1-5-1 requires that jurors be enrolled members of the Menominee Tribe between ages 18 and 70, not convicted of a felony or a Class A offense under this Code, not be a judge, officer, or other employee of the court, and must reside on the reservation.**

2. Procedure

- a. The eligible juror list must be updated each year to reflect the names of those persons who have reached the age of 18 and remove the names of deceased persons.
- b. The Chief Justice must obtain a list of resident eligible voters of the Menominee Reservation each year from the Tribal Legislature. The list of resident eligible voters is drawn from the list of all tribal enrollees. The resident eligible voters list will also be used as the eligible juror list.
- c. Each year the tribal council should submit an updated eligible voter list to the Chief Justice at the court to be used as the eligible juror list.

B. Drawing the Jury Panel

1. Code Requirements

The Menominee Tribal Code, in Chapter 5, § 1-5-3(2), requires jurors to be drawn from the eligible juror list by means of random, impartial selection. No further procedure for drawing a jury is specified in the tribal code.

2. Procedure

- a. Upon receipt of the list of eligible voters/jurors from the tribal legislature, the court clerk shall assign each name on the list a number, 1-1711 or however many names are on the list.

* 1-5-2. Jury List. Each year, the Chief Justice shall prepare a list of eligible jurors, which list shall contain not less than forty (40) names and which shall contain the names of persons from each community, prorated as nearly as possible according to the relative populations of the communities.

** Non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved if the Chief Justice adopts such a rule and procedure. Chapter 5, § 1-5-1.

- b. After a request for a jury trial, pieces of paper with numbers 1-114 should be placed in a box. The Chief Justice should draw one number (in a blind drawing) out of the box. That number is the first name selected from the master list of eligible jurors.*
- c. To select the next person, the Chief Justice or Clerk then counts forward 114 numbers/names and selects that person. Continue this process until 15 names have been selected from the master list.

Example:

Chief Justice selects #6 out of the box. The person who is number six on the list is the first selection. Count forward 114 numbers, the person who is #120 is the next selection. Count forward 114 numbers, the person who is #234 is the next selection. So on until 15 names are drawn. Names of persons selected are not removed from the master list; should any of them be selected again within a year, they may request to be excused.

- (1) Clerk completes JUROR ARRAY form with the names, addresses and telephone numbers of those persons selected from the master list.
 - (a) Use this list as a source for contacting jurors.
 - (b) Use this list for keeping track of those persons excused or disqualified, and those persons added to replace excused or disqualified persons.
 - (c) The JUROR ARRAY form is later used for jury roll call at the beginning of the trial.
 - (d) Discard JUROR ARRAY after the trial.
- d. Those persons whose names are selected are each mailed:
 - (1) JURY SUMMONS
 - (2) JURY QUALIFICATION QUESTIONNAIRE
 - (3) A TRIAL JURORS GUIDEBOOK
 - (4) A STAMPED, RETURN ADDRESSED ENVELOPE.

* To determine the interval at which names are selected, divide the total number of eligible jurors by the number of jurors needed for a panel. Example: if 12 are needed and there are 1000 eligible jurors, draw every 83rd name. Put 83 numbers in a box, draw a number, and then select every 83rd person thereafter.

v.

[illegible]

e. THE JURY SUMMONS:

- (1) The top half of the JURY SUMMONS is completed by the clerk of court.
 - (i) Name of juror selected
 - (ii) Time, day, and date of trial i.e, 9:00 a.m., Thursday, January 9, 1982.
 - (iii) Clerk of court dates summons with date mailed.
 - (iv) Clerk of court signs in space provided.
- (2) The bottom half of the JURY SUMMONS form is completed by the prospective juror only if he is disqualified or wishes to be excused from jury duty.
 - (i) Requests for excuse are discretionary if returned to the court; should be reviewed by the Chief Justice and:
 - (ii) Granted or denied; immediately mail a NOTICE OF EXCUSE FROM JURY DUTY or a DENIAL OF EXCUSE FROM JURY DUTY.
 - (iii) The Chief Justice must determine whether excuses fall into one of the 3 permissible categories.
 - (a) Their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors.
 - (b) Service would be a continuing hardship to them or to members of the public.
 - (c) They have been called for jury service during the one (1) year preceding their summons.

Justices must strictly adhere to their determinations to ensure consistent treatment of all persons.

 - (iv) Disqualifications are not discretionary. A prospective juror must be disqualified if:
 - (a) not 18 years old or is older than 70.
 - (b) is not a member of the Menominee Tribe
 - (c) is not a resident of the Menominee Reservation
 - (d) is currently a member of the tribal council
 - (e) has been convicted of a felony and has not completed sentence or parole
 - (f) is a judge, attorney, lay advocate, or employee of the court.
- (3) For each person excused from jury duty, repeat steps c. and d. to provide another prospective juror.
- (4) Attach disqualifications/excuses requests to juror array form.

MENOMINEE TRIBAL COURTS

JURY SUMMONS

NAME _____

You are hereby notified that your name has been selected for jury service. Report to the court at _____ a.m./p.m. on _____ the _____.

Please complete the attached qualification form. Excuse from jury duty is not automatic, but must be claimed. If you qualify for excuse and prefer not to serve, state the reason in the space provided, sign this form, and return to the Court. If you are disqualified for any of the reasons listed below, check the appropriate box, sign this form, and return to the Court.

Date _____

Clerk of Court

I am disqualified for jury service because:

☐ I am not a reservation resident. Give present address.

☐ I am under 18 years of age or over age 40. Please give present age. _____

☐ I am not a Menominee Tribal member.

☐ I have been convicted of a felony and have not yet completed my sentence or parole.

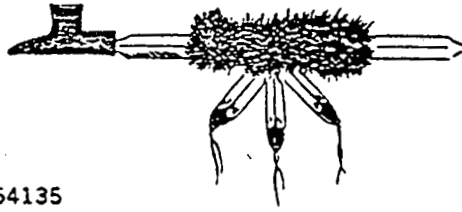
☐ I am a judge, attorney, police, court staff, lay advocate, or employee of the court.

☐ I am currently a member of the tribal council.

I would like to be excused from jury service for the following reason:

Dated: _____ Sign Here _____

Menominee Indian Tribe of Wisconsin



P. O. Box 429
Keshena, Wisconsin 54135

Telephone
1-715-799-3348

MENOMINEE TRIBAL COURTS

NOTICE OF EXCUSE FROM JURY DUTY

Dear Citizen:

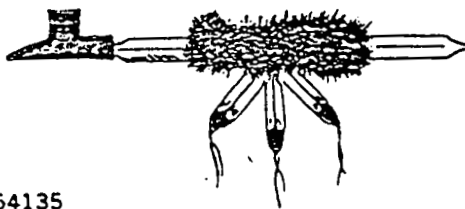
Your request for excuse from jury duty in the Menominee Tribal Court has been granted.

Should you be called again for jury service, it will be necessary for you to follow the same procedures again to gain approval from excuse from jury duty.

Dated: _____

CHIEF JUSTICE

Menominee Indian Tribe of Wisconsin



P. O. Box 429
Keshena, Wisconsin 54135

Telephone
1-715-799-3348

MENOMINEE TRIBAL COURTS

DENIAL OF EXCUSE FROM JURY DUTY

Dear Citizen:

Your request for excuse from jury duty in the Menominee Tribal Court has been denied. Report for jury duty as scheduled.

You are reminded that under the Menominee Interim Law and Order Code, Chapter 3, § 1-3-1(5):

Acts or Failures to Act Which Constitute Contempt of Court.

- (5) Disobedience to a lawful judgment, order or process of the Court.

§ 1-3-3. 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 \$100.00 and/or up to one (1) month in jail.

Dated: _____

Chief Justice

f. JUROR QUALIFICATION QUESTIONNAIRE:

- (1) Completed by prospective juror if not disqualified or excused.
- (2) Should be returned to the court within 7 days. If not returned, clerk should immediately mail a REMINDER to RETURN JUROR QUESTIONNAIRE. Clerk may also wish to telephone the prospective juror to remind him/her.
- (3) Upon receipt of the questionnaire, the clerk should examine it for completeness, note any blank spaces and either telephone for the information or note it and request the person to complete it on the day he/she reports for duty.
- (4) Questionnaires should be put in a folder, identifying the trial they were called for and made available for parties inspection upon their request.
- (5) After the trial, the court clerk should complete the bottom box of the form entitled "For Court Use Only." Indicate whether the person was selected or not, and the date of the trial. This information is for further reference, should the person be called for jury duty again.

g. File questionnaires alphabetically.

MENOMINEE TRIBAL COURTS

JUROR QUALIFICATION QUESTIONNAIRE

1. Name _____
2. Date of Birth _____ Spouse's Name _____
3. Home Address _____
(Street) (City) (State) (Zip Code)
- 3a. Home Phone Number _____ 3b. Work Phone _____
4. Years of Residence on the Reservation _____
5. Marital Status: ___ Married ___ Single ___ Separated ___ Divorced ___ Widowed
6. Number of Children _____
7. Your Occupation and Employer _____
(If retired, list last occupation and employer) _____
8. Spouse's Employer _____
9. Education (circle last year completed) Elementary School 1 2 3 4 5 6 7 8
High School 1 2 3 4
Other _____ 1 2 3 4 5 6 _____

Yes No

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 10. Do you speak, read, and write the English Language understandingly? |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. Have you served as a juror? If yes, When _____ Which Court _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. Have you or any member of your immediate family been a party to any lawsuit? |
| <input type="checkbox"/> | <input type="checkbox"/> | 13. Has a claim for personal injury ever been made against you or have you ever made a claim for personal injury? |
| <input type="checkbox"/> | <input type="checkbox"/> | 14. Have you ever been convicted of a crime punishable by imprisonment for more than one year? If your answer is YES, have your civil rights been restored by pardon? YES _____ NO _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | 15. Are you presently under a doctor's care or do you have any physical impairment which makes you incapable of rendering satisfactory jury service? (If YES, explain: _____.) |
| <input type="checkbox"/> | <input type="checkbox"/> | 16. Are you related to or close friends with any law enforcement officer? |
| <input type="checkbox"/> | <input type="checkbox"/> | 17. Is there any reason why you should not serve as a juror? If so, why? _____ |

I certify that the above statements made in this qualification form are true.

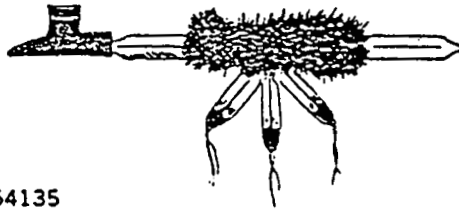
Sign here _____

For Court Use Only

Selected for duty _____ Yes _____ No _____

Date Served _____

Menominee Indian Tribe of Wisconsin



P. O. Box 429
Keshena, Wisconsin 54135

Telephone
1-715-799-3348

MENOMINEE TRIBAL COURTS

REMINDER TO RETURN JUROR QUESTIONNAIRE

On _____ a juror summons and qualification form was mailed to you, to be completed and returned to our office within 5 days.

We have not yet received your questionnaire. Please complete and return the juror qualification questionnaire form or the request for excuse from jury service.

You are hereby reminded under the Menominee Interim Law and Order Code, Chapter 3, § 1-3-1(5) and § 1-3-3:

Acts or Failures to Act Which Constitute Contempt of Court.

- (5) Disobedience to a lawful judgment, order or process of the Court.

§ 1-3-3. 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 \$100.00 and/or up to one (1) month in jail.

Dated: _____

Clerk of Court

h. REMINDER TO REPORT FOR JURY DUTY

- (1) Clerk should complete this form and mail to all qualified jurors one week before trial date.

i. Date of Trial:

- (1) Place/Person where jurors are to report should be clearly identified.
- (2) Jurors should be instructed where to wait and location of restrooms, fountains, coffee, and eating arrangements if they'll be there all day.
- (3) Clerk should remind jurors that before they leave the court each of them should complete a JUROR EXIT QUESTIONNAIRE and sign and complete the JURY FEES FORM.
- (4) Bailiff will show jurors into the courtroom when called.

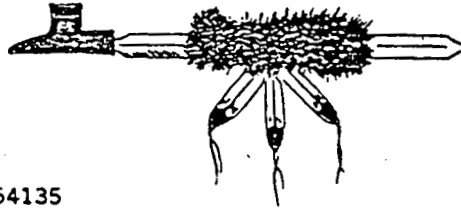
j. Clerk complete JUROR CERTIFICATES

- (1) Name of Juror.
- (2) Date of Trial.
- (3) Signature of Chief Justice and two associate justices.
- (4) Give a certificate to all jurors who report, not only those selected.

k. Clerk complete EMPLOYER CERTIFICATION FORM for any juror who requests it.

- (1) Name of Juror.
- (2) Date of Trial.
- (3) Clerk's Signature.

Menominee Indian Tribe of Wisconsin



P. O. Box 429
Keshena, Wisconsin 54135

Telephone
1-715-799-3348

MENOMINEE TRIBAL COURTS

REMINDER TO REPORT FOR JURY DUTY

Dear Juror:

You are hereby reminded of the date you are to appear for
Jury Duty:

You should expect to be at the Court this entire day.
Please note your mileage to the Court.

Dated: _____

Clerk of Court

III. JURY TRIAL PROCEDURE

A. Criminal

- (1) Bailiff or Clerk Calls Court to Order.
- (2) Clerk Calls Roll of Jury Array.
 - (a) Judge or Clerk call name of each juror using the JUROR ARRAY form.
 - (b) Roll call can be in the courtroom or jury room (if not enough room in courtroom).
- (3) Call Case for Trial:
 - (1) State name of case;
 - (2) Charge (state the offense and briefly describe the charge by referring to the complaint); and
 - (3) Introduce legal counsel and parties.

Example:

"Ladies and Gentlemen of the jury panel. Today, we will hear the case of _____ Tribe vs. _____, Defendant. You have been selected for the jury panel from which six (6) will be chosen to hear this case. The prosecution and defense will be given an opportunity to ask specific questions to determine if you should sit on the jury in this case, but I will ask you some general questions first. Please rise and you will be sworn concerning the answers you will give to the questions to be asked of you."

- (4) Clerk Swears Jury Panel.
 - (a) Oath:

"You, and each of you, do solemnly swear or affirm that you will true answers give to such questions as may be put to you, touching upon your qualifications as jurors, in the case now on trial before the court. So help you God."
 - (b) Affirmation in lieu of oath (optional). Substitute for words "so help you God" at end of oath with the following: "This you do affirm under the pains and penalties of perjury".
- (5) Have Clerk Draw Jury.
 - (a) Six persons in criminal trials
 - (b) Clerk puts names of all 15 jurors in a box. In a blind drawing, select 6 names.
- (6) The placement of Jurors is at discretion of judge. (However, the court may want to place the first juror selected to the far right of the juror box and the remaining jurors to the left with No. 6 on the left end).

(7) Conduct Voir Dire.

(a) Examination of Jurors for Cause.

- (i) Explain proceeding to jury panel.
- (ii) Judge and/or the parties may examine panel, as whole or individually. The Judge should ask the questions noted below in sections (iii) and (iv), thereafter the parties may ask any additional questions.
- (iii) For general cause--disqualified from serving in any case or trial. Disqualifications:
 - (1) Is currently a member of the tribal council.
 - (2) Has been convicted of a felony and has not completed sentence or parole.
 - (3) Is not resident of Menominee Reservation
 - (4) Is not a member of Menominee Tribe
 - (5) Is not at least 18 years old or less than 70
 - (6) Is a judge, attorney, lay advocate, or employee of the court.
- (iv) For particular cause--disqualified from serving only in individual case of trial.
 - (1) Implied bias:
Bias which, when existence of facts is ascertained, in judgment of law disqualifies juror.
 - (a) Consanguinity or affinity;
 - (b) Relationship to either party;
Example:
"Are any of you closely related to the defendant or to the prosecutor? That is, within the 3rd degree?"
 - (c) Previously served as juror or witness, between same parties;
 - (d) Interest in action;
 - (e) Having unqualified opinion (prejudice);
Example:
"Now to this charge, the defendant has pleaded not guilty. Throughout the trial, he is presumed to be innocent until his guilt is proven beyond a reasonable doubt. The prosecution or the tribe has the burden of proving this guilt. Do you understand that the defendant has these rights and do you agree with them?"
 - (f) Bias.

(2) Actual bias:

Existence of state of mind on part of juror, with reference to case or to either party, which satisfies court in exercise of sound discretion, that he cannot try issue impartially without prejudice to substantial rights of party challenging, and which is known in this title as actual bias.

Example:

"Is there anything in the type or kind of charge involved that would make you prejudiced against the defendant or the prosecutor or make it difficult for you to judge the case? Is there anything that you can think of which would make it impossible for you to give the defendant or the prosecutor a fair and impartial trial?"

Note: Challenges for cause should be granted if the Judge agrees that the particular juror challenged could not render a fair and impartial verdict in the case. If a challenge for cause of granted, the particular juror is excused from the jury panel for this case.

(b) Exercise of Peremptory Challenges (up to 3 per side).

(i) Order in which taken:

- (1) Menominee Tribe first;
- (2) Defense next;
- (3) Parties exercise their peremptory challenges by striking jurors names from a list passed back and forth between them.

(ii) Number of peremptory challenges

- (1) Three for each side.
- (2) Keep track of which has used peremptories and how many.

(iii) Clerk keep track of those persons challenged on the juror array form.

(iv) Call another juror immediately to replace those excused for cause.

(8) Alternate jurors.

- (a) Court shall direct that one juror be called and impanelled to sit as an alternate juror to the regular jury.

(9) Ascertain that Counsel have exercised all Peremptory challenges desired.

(10) Swear Jury.

(a) Oath:

"Do you swear or affirm that you will truly try the case, now pending and render a verdict in accordance with the evidence presented and the law as given to you by the Judge, so help you God."

(b) Affirmation in lieu of oath. (Optional)

Substitute for words, "So help you God", at end of oath with the following:

"This you do affirm under the pains and penalties of perjury."

(11) Excuse Panel not selected, remind them to complete EXIT QUESTIONNAIRE and FEES FORM, if they have not already done so..

(12) Preliminary Statement to Jury:

(a) Outline proceedings;

(b) Role of Judge (to decide law);

(c) Role of jury (to decide facts);

(d) Purpose of bench or chamber conference;

(e) Conduct of jury, admonishments:

(i) That they are to weigh carefully the testimony and evidence presented.

(ii) That they are to exclude any rumors, reports or gossip that they may have heard.

(iii) That they are entitled to consider the interest each witness may have in the outcome of the case.

(iv) That where they find any witness has testified falsely in one respect they may properly question and view with suspicion the balance of his testimony.

(v) That the burden rests upon the prosecution to show the defendant's guilt beyond a reasonable doubt before the jury can properly return a guilty verdict.

(vi) That they should not attempt to reach any decision or discuss the case until all the evidence in in and they have been given instructions as to the law to apply in the case.

(f) Admonish Jury at each Recess:

(i) Not to discuss the case with anyone;

(ii) Not to show their notes to anyone;

(iii) Not to attempt to learn anything about the case outside courtroom;

- (iv) To avoid radio, television, newspaper comments about trial;
- (v) Not to form any opinion until case is submitted to them.

- (13) Tribe's Opening Statement
- (14) Defense Legal Counsel's Opening Statement, unless reserved.
- (15) Tribe's Evidence. Tribe Rests.
- (16) Defense Legal Counsel's Motions Outside Presence of Jury.
- (17) Defense's Opening Statement, if earlier reserved.
- (18) Defense's Evidence. Defense Rests.
- (19) Rebuttal Evidence. Both Sides Rest. (Prosecution first).
- (20) Defense Legal Counsel's Motions outside Presence of Jury.
- (21) Before Instructing Jury and Closing Arguments, Request Exceptions to Jury Instructions outside Presence of Jury.
- (22) Endorse Ruling on Request Jury Instructions, showing whether given or refused.
- (23) Tribe's Closing Argument.
- (24) Defense's Closing Argument.
- (25) Tribe's Final Argument.
- (26) Instruct Jury (including burden of proof, applicable law need for foremen and, if necessary, sealed verdict, special verdict, and written interrogatories).

(a) Sample Instructions*

"Ladies and Gentlemen of the jury, I will read to you the principles of law you will apply to the facts in this case. These are the instructions. The defendant, _____, is on trial before you upon a complaint filed in this Court charging him with the offense of _____ in violation of Section _____ of the Tribal Code. The defendant has plead not guilty, and this plea of not guilty places upon the prosecution the burden of proving his guilt to your satisfaction and beyond a reasonable doubt. The complaint itself is not evidence but is the charge which has been made against the defendant.

* Taken from Criminal Courts Procedures Benchbook prepared by National American Indian Court Judges Association (1976).

The essential elements of the offense which must be proven to your satisfaction and beyond a reasonable doubt before you can find the defendant guilty are on or about the _____ day of _____, 19____, on the _____ Indian Reservation, the defendant did _____. The law presumes that a person charged with a crime is innocent until his guilt is established beyond a reasonable doubt. The defendant is entitled to the benefit of this presumption until it has been overcome by facts establishing defendant's guilt beyond a reasonable doubt.

A reasonable doubt is such a doubt as would cause a reasonable and prudent man to pause and hesitate to act upon the truth of the matters charged. The jury should patiently and dispassionately weigh and consider the testimony and bring to bear upon it the exercise of common sense and judgment as reasonable men and women. And if, after considering the evidence, you can say that you have an abiding conviction of the truth of the charge, then you are satisfied beyond a reasonable doubt."

(In case the defendant does not testify)

"The fact that the defendant did not testify may not be considered as any evidence that he is guilty."

(Multiple Counts)

"Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other count. The defendant may be convicted or acquitted on any or all of the offenses charged. Your findings as to each count must be stated in a separate verdict.

You are the sole judges of the credibility of the witnesses who testified and of the weight to be given to the testimony of each of the witnesses. In determining the credit to be given any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, and any interest, bias or prejudice considered in the light of all the evidence in the case.

Faithful performance by you and your duties is vital to the administration of justice.

The law applicable to this case is contained in these instructions and it is your duty to follow all of them. It is your duty to determine the facts, and to determine them from the evidence produced in open Court. You are to apply the law to the facts and in this way decide the case.

The evidence which you are to consider consists of testimony of the witnesses and the exhibits offered and received which are governed by rules of law. It is my duty as judge to rule on the admissibility of evidence and you must not concern yourself with this. You are not to consider testimony or exhibits which were ordered stricken or which were not admitted as evidence. Arguments, statements, and remarks of counsel are intended to help you in understanding the evidence and applying the law, but are not evidence.

Neither by these instructions, nor by any ruling or remark which I have made do I, or have I meant to, indicate any opinion as to the facts which have or have not been proven in the case."

(Forms of Verdict - Unanimous or Majority Vote Verdict)

- I hand you two (2) forms of verdict. The first:

"We, the jury, find the defendant guilty." The second:

"We, the jury, find the defendant not guilty."

When you retire, you will first select one of your number as foreperson. When you have agreed upon a verdict, your foreperson will sign the form of verdict you have agreed upon, and you will all return it into the open Court. Your verdict must be ("unanimous" or "majority vote" depending on the Tribal Code.)

You may not retire and consider the evidence in the light of the Court's instructions."

NOTE: (The Supreme Court has held that the Sixth Amendment guarantee of a jury trial, made applicable to the states by the Fourteenth Amendment, does not require that the jury's vote be unanimous. See: Johnson v. Louisiana, 406 U.S. 356, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972) and Apodaco v. Oregon, 406 U.S. 404, 92 S.Ct. 1628, 32 L.Ed.2d 184 (1972).)

A unanimous jury verdict is probably not required in Indian Courts under the Supreme Court's rational that less-than-unanimous jury verdicts in criminal cases do not violate the Due Process Clause for failure to satisfy the reasonable doubt standard. However, probably more than the agreement of a bare majority of the jurors is required to say that the jury was convinced of the defendant's guilt beyond a reasonable doubt. Most statutes require a 2/3 verdict or 3/4 verdict in criminal cases where unanimity is not required. With a jury of six (6) persons, probably a decision by at least five (5) of the six (6) should be required to meet the reasonable doubt standard.

Failure to do so, a mistrial is declared and a date set for a new trial in the discretion of the Court until which time the defendant may be continued in detention or released under the conditions established by the Court.

Polling of the jury may take place, upon request of the defendant, and each juror will respond by "Yes" or "No" to the following questions from the Court:

"_____ is this your verdict."
If the required number of jurors does not support the verdict, the Court must declare a mistrial. The judge has discretionary power to discharge a jury without consent of either party if, after a reasonable time for deliberation, a verdict cannot be agreed upon. The Judge should be satisfied, however, of the impossibility of an agreement since an unwarranted discharge of a jury constitutes an acquittal.

- (b) Jury Verdict Form
- (i) instruct jury to indicate guilty or not guilty for each count.
- (ii) instruct each juror to sign the form.

(27) Swear Bailiff or Court Officer for Deliberation of Jury.

Oath:

"You do swear or affirm that you will keep these jurors together in some quiet and convenient place, you will not permit any person to speak to them or speak to them yourself except by order of court or to ask them whether they have agreed upon verdict, and you will return them into court when they have agreed upon verdict or when ordered by court."

(28) Jury Deliberation:

- (a) Explain role of bailiff (no instructions by bailiff-- must report to Judge);
 - (i) Bailiff is an officer of the court charged with keeping order in the court.
 - (ii) Attends the jury (outside the jury room) while they deliberate.
- (b) No material in room except exhibits, notes, and all or such parts of written instructions as court may direct.

(29) Bailiff escorts jury into retirement.

(30) Discharge and Thank Alternate Juror, if used.

(31) Judge Reviews Exhibits.

(32) Bailiff takes received Exhibits to Jury Room.

(33) Court recesses until Jury Renders Verdict or is Discharged, although it may conduct other Business while waiting for Verdict.

(34) Provide additional Jury Instructions, if required.

(35) Jury Returns.

(36) Bailiff receives Verdict and gives it to Judge.

- (a) Judge reviews verdict before it is handed to Clerk.

Note:

If a verdict cannot be reached by the jury, then the Court will ask the jury to try again, but upon failure to do so, a mistrial is declared and a date set for a new trial in the discretion of the Court until which time the defendant may be continued in detention or released under conditions established by the Court.

- (b) Clerk then reads entire verdict.

- (c) Judge or Clerk asks jury if that is their verdict.

- (d) Clerk polls jury if requested by legal counsel or on court's own motion.

Note:

Polling of the jury may take place, upon request of the defendant, and each juror will respond by "Yes" or "No" to the following question from the Court:

" (Name of Juror) " is this your verdict."

If the required number of jurors does not support the verdict, the Court must declare a mistrial. The judge has discretionary power to discharge a jury without consent of either party if, after a reasonable time for deliberation, a verdict cannot be agreed upon. The Judge should be satisfied, however, of the impossibility of an agreement since an unwarranted discharge of a jury constitutes an acquittal.

(37) Thank and Discharge Jury.

- (a) Instruct Jurors to sign for mileage and fees at Clerk's office, if they have not already done so.
- (b) Inform Jurors they may, but are not required, to talk about the case.
- (c) Complete Juror Exit Questionnaire.

(38) If Verdict is Not Guilty, Discharge Defendant.

(39) If Verdict is Guilty:

- (a) Order presentence investigation, if appropriate.

- (b) Pending sentence, either (i) commit defendant, or (ii) continue or alter bail and release defendant.
- (c) Adjourn or recess court, if sentencing will be at later time or date.
- (d) Impose sentence without unreasonable delay.
- (e) Advise defendant that right to appeal guilty verdict must be filed within 10 days of conviction.
- (f) Enter judgment and sign it.

(40) Clerk complete Jury Panel Form

- (a) Name of case (plaintiff and defendant).
- (b) Names of attorneys or lay advocates.
- (c) Charge and code section.
- (d) Names of Jurors and alternate if used.
- (e) Time and date of trial.
- (f) Judge's name.
- (g) File Form with the case.

B. Civil

- (1) Court Called to Order by Bailiff or Clerk.
- (2) Clerk Calls Roll of Jury Panel.
 - (a) Judge or Clerk call name of each juror using the JUROR ARRAY form.
 - (b) Roll call can be done in the courtroom or jury room (depending upon courtroom space).
- (3) Clerk Swears Jury Panel.
 - (a) Oath:

"You, and each of you, do solemnly swear or affirm that you will true questions give to such questions as may be put to you, touching upon your qualifications as jurors, in the case now on trial before the court. So help you God."
 - (b) Affirmation in lieu of oath (optional). Substitutes for the words "so help you God" at the end of the oath with the following: "This you do under the pains and penalties of perjury."
- (4) Call Case for Trial.

(5) Introduce Legal Counsel or Advocate and Parties.

Example:

"Ladies and Gentlemen of the jury panel. Today, we will hear the case of Plaintiff vs., Defendant. You have been selected for the jury panel from which six (6) will be chosen to hear this case. The plaintiff and defendant will be given an opportunity to ask specific questions to determine if you should sit on the jury in this case, but I will ask you some general questions first. Please rise and you will be sworn concerning the answers you will give to the questions to be asked of you."

(6) Have Clerk Draw Jury.

- (a) Six persons in all Civil Cases
- (b) Clerk puts names of all 15 jurors in a box. In a blind drawing select 6 names.

(7) Conduct Voir Dire.

(a) Examination of Jurors for Cause.

- (i) Explain proceeding to jury panel.
 - (1) Contents of the complaint
 - (2) Section of the Code or laws of the State of Wisconsin under which complaint filed.
- (ii) Judge may examine panel, as whole or individually. The magistrate should ask the questions noted in section 7(b) below.
- (iii) Parties may examine prospective jurors. Questions are subject to court review.
- (iv) Plaintiff examines jurors first.

(b) Challenges for Cause.

(i) Disqualification from Jury Service:

- (1) Is not resident of Reservation.
- (2) Is not between 18 and 70 years of age.
- (3) Is not a member of the Menominee tribe.
- (4) Has been convicted of a felony and has not completed sentence or parole.
- (5) Is a judge, attorney, lay advocate, or employee of the court.
- (6) Is currently a member of the tribal council.
- (ii) Consanguinity or affinity;
- (iii) Relationship to either party;

Example: Are any of you closely related to the defendant or to the plaintiff? That is, within the 3rd degree?

- (iv) Previously served as juror or witness, between same parties;
- (v) Interest in action;
- (vi) Having unqualified opinion (prejudice);
- (vii) Bias;

Example: Is there anything in this type or kind of case involved that would make you prejudice against the defendant or the plaintiff or make it difficult for you to judge the case? Is there anything that you can think of which would make it impossible for you to give the defendant or the prosecutor a fair and impartial trial?

NOTE: Challenges for cause should be granted if the Judge agrees that the particular juror challenged could not render a fair and impartial verdict in the case. If a challenge for cause is granted, the particular juror is excused from the jury panel for this case.

(c) Exercise of Peremptory Challenges.

- (i) Order in which taken:
 - (1) Plaintiff first;
 - (2) Defense next.
 - (3) Parties exercise their peremptory challenges by striking juror's names from a list passed back down and forth between them.
 - (ii) Number of Peremptory Challenges.
 - (1) For all civil cases, 3 for each side.
 - (2) Clerk keep track which side has exercised peremptory challenges and how many.
- (8) Court shall direct that one juror be called and impanelled to sit as an alternate juror.
 - (9) Alternate Juror Selected (if not already done).
 - (10) Juror placement form is at discretion of Judge. However, there will be less confusion if juror seats are filled from right to left, starting with the back row.
 - (11) Ascertain if Legal Counsel or Advocates Satisfied with Selection Process.
 - (12) Swear Jurors when Selection Completed.
 - (a) Oath:

"Do you swear or affirm that you will truly try the case now pending and render a verdict in accordance with the evidence presented and the law as given to you by the Judge. So held you God."

- (b) Affirmation in lieu of oath. (Optional)
Substitute for the words "So help you God" at
the end of the oath with the following:

"This you do affirm under the pains and
penalties of perjury."

- (13) Excuse Jurors not selected, remind them to complete Exit
Questionnaire and Fees Form, if they have not already done
so.

- (14) Preliminary Statement to Jury:

- (a) Outline proceedings;
- (b) Role of Judge (to decide the law);
- (c) Role of Jury (to decide facts);
- (d) Purpose of bench or chamber conferences;
- (e) Conduct of jury, admonishments.

(i) That they are to weigh carefully the testimony
and evidence presented.

(ii) That they are to exclude any rumors, reports or
gossip that they may have heard.

(iii) That they are entitled to consider the interest
each witness may have in the outcome of the case.

(iv) That where they find any witness has testified
falsely in one respect they may properly question and
view with suspicion the balance of his testimony.

(v) That their findings for either the plaintiff or
the defendant must be based on a preponderance of the
evidence.

(vi) That they should not attempt to reach any
decision or discuss the case until all the evidence is
in and they have been given instructions as to the law
to apply in the case.

- (f) Admonish Jury at Each Recess:

- (i) Not to discuss case with anyone;
- (ii) Not to show their notes to anyone;
- (iii) Not to attempt to learn anything about case
outside courtroom;
- (iv) To avoid radio, television, newspaper comments
about trial;
- (v) Not to form any opinion until case is submitted
to them.

- (15) Plaintiff States Issue(s) and Theory of Case. Opening
Statement.

- (16) Defense Legal Counsel's Opening Statement, unless Reserved.
- (17) Plaintiff's Evidence. Plaintiff Rests.
- (18) Defense's Legal Counsel's Motions Outside Presence of Jury.
- (19) Defense's Opening Statement, if Not Given Earlier.
- (20) Defense's Evidence. Defense Rests.
- (21) Plaintiff Legal Counsel's Motions Outside Presence of Jury.
- (22) Rebuttal Evidence. Both Sides Rest.
- (23) Defense Legal Counsel's Motions Outside Presence of Jury.
- (24) Plaintiff Legal Counsel's Motions Outside Presence of Jury.
- (25) Before Instructing Jury and Closing Arguments, Request Exceptions to Jury Instructions Outside Presence of Jury.
- (26) Endorse Ruling on Requested Jury Instructions, Showing Whether Given or Refused.
- (27) Plaintiff's Closing Arguments.
- (28) Defense's Closing Arguments.
- (29) Plaintiff's Concluding Arguments.
- (30) Judge Instructs Jury (including burden of proof, applicable law, need for foreman, and if necessary, sealed verdict, special verdict, and written interrogatories.)
 - (a) instruct Jurors to indicate whether verdict is for plaintiff or defendant.
 - (b) instruct each Juror to sign the form.
- (31) Swear Bailiff for Deliberation of Jury.

Oath:

"You do swear or affirm that you will keep these jurors together in some quiet and convenient place, that you will not permit any person to speak to them or speak to them yourself except by order of the court or to ask them whether they have agreed upon a verdict, and that you will return them into court when they have agreed upon verdict or when ordered by the court."

(32) Jury Deliberation:

- (a) Explain role of bailiff (no instructions made by bailiff -- must report to Magistrate);
 - (i) Bailiff is an officer of the court charged with keeping order in the court.
 - (ii) attends the jury (outside the jury room) while they deliberate.
- (b) Jurors may take to jury room exhibits, notes, and written instructions except as court may direct.

(33) Bailiff Escorts Jury into the jury room for deliberation.

(34) Discharge and Thank Alternate Juror(s).

(35) Judge Reviews Exhibits.

(36) Bailiff delivers Exhibits to Jury.

(37) Court recesses until Jury Renders Verdict or is discharged, although it may conduct other business, while waiting for verdict.

(38) Provide additional Jury Instructions, if required.

(39) Jury Returns.

(40) Bailiff receives Verdict and gives it to Judge.

(a) Judge reviews verdict before it is handed to Clerk.

NOTE: If less than four (4) of the jurors agree on the verdict, the court may either send the jury back for further deliberations or discharge the jury and set the case for another trial.

(b) Clerk reads entire verdict.

(c) Judge or Clerk asks jury if that is their verdict.

(d) Clerk polls jury, if requested by legal counsel or on court's own motion.

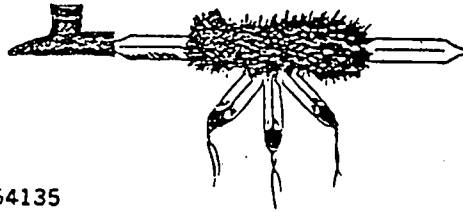
NOTE: Polling of the jury may take place, upon request of the defendant, and each juror will respond by "Yes" or "No" to the following question from the Court:

"..... is this your verdict."

If the required number of jurors does not support the verdict, the Court must declare a mistrial. The judge has discretionary power to discharge a jury without consent of either party if, after a reasonable time for deliberation, a verdict cannot be agreed upon. The Judge should be satisfied, however, of the impossibility of an agreement since an unwarranted discharge of a jury constitutes an acquittal.

- (41) If Special Verdict, Enter Judgment.
- (42) Thank and Discharge Jury.
 - (a) Instruct Jurors to sign for mileage and fees at Clerk's office, if they have not already done so.
 - (b) Instruct every Juror to complete Exit Questionnaire before leaving the court.
 - (c) Inform Jurors they may but are not required to talk about case.
- (43) File Verdict with Clerk
- (44) Clerk makes necessary entries in Minutes.
- (45) Clerk complete Jury Panel Form.
 - (a) Name of Case (plaintiff and defendant).
 - (b) Names of attorneys or lay advocates.
 - (c) Charge and code section.
 - (d) Names of Jurors and alternate if used.
 - (e) Time and date of Trial.
 - (f) Judge's name.
 - (g) File Form with the Case.

Menominee Indian Tribe of Wisconsin



P. O. Box 429
Keshena, Wisconsin 54135

Telephone
1-715-799-3348

MENOMINEE TRIBAL COURTS

JURY PANEL

Plaintiff,

versus

Defendant.

Prosecutor _____
Defense Attorney _____
Complainant _____
Charge: _____

JURY PANEL

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

Alternate Juror

TRIAL SET FOR: _____

TIME: _____

JUDGE: _____

MENOMINEE TRIBAL COURTS

JURY SERVICE EXIT QUESTIONNAIRE

1. Approximately how many hours did you spend at the court? _____

2. What percent of these hours was spent waiting for jury picks or trials to begin? _____

3. Were you actually selected to be a juror? _____

4. How would you rate the following factors:

	GOOD	ADEQUATE	POOR
Juror Manual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Treatment by court personnel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Physical comforts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Eating arrangements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scheduling of your time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. Did you lose income as a result of jury service? _____
(If yes, approximately how much?) _____

6. Have you ever served on jury duty before? _____
(If yes, how many times?) _____

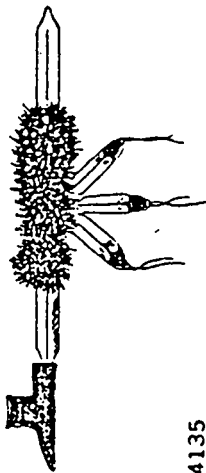
7. When you were first called to be a juror, what was your reaction?
_____ Pleased _____ Neutral _____ Displeased

8. If you were called again, what would your reaction be?
_____ The Same _____ More Pleased _____ Less Pleased

Why? _____

9. In what ways do you think jury service can be improved?

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MENOMINEE TRIBAL COURTS

EMPLOYER CERTIFICATION FORM

TO WHOM IT MAY CONCERN: THIS IS TO CERTIFY THAT

WAS SUBPOENAED

AND

APPEARED FOR JURY DUTY ON: _____

DATED THIS _____ DAY OF _____, 19 _____

CLERK OF COURT

MENOMINEE TRIBAL COURTS

JURY VERDICT

(Criminal Case)

Case No. _____

v.

We the Jury in the above noted case do find the defendant:

Not Guilty

Guilty

Charge(s)

Count 1 _____
Count 2 _____
Count 3 _____
Count 4 _____

Juror Signatures

Dated: _____

Foreman

MENOMINEE TRIBAL COURTS

JURY VERDICT

(Civil Case)

Case No. _____

Plaintiff

vs.

Defendant

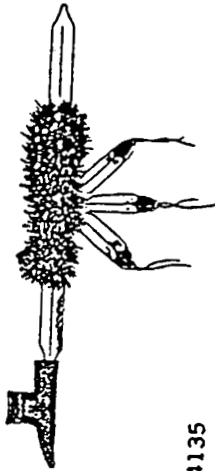
The Jury finds for the _____ and
finds damages in the amount of _____.

Juror Signatures

Dated: _____

Foreman _____

Menominee Indian Tribe of Wisconsin



P. O. Box 429
Keshena, Wisconsin 54135

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1-715-799-3348

MENOMINEE TRIBAL COURTS

This certifies that

*has served as Juror in said Court in fulfillment of
the duties of good citizenship*

DATED: THIS _____ DAY OF _____ 19 ____

CHIEF JUSTICE

ASSOCIATE JUSTICE

ASSOCIATE JUSTICE

IV. JURY FEES

A. Menominee Tribal Code

The Menominee Criminal Rules of Court, Rule 22(d) states:

- (d) Each juror shall be paid out of Tribal funds the sum of \$16.00 for each day of service, plus twenty (20) cents a mile for his transportation costs to and from court.

Those jurors who are called and report for jury duty but who are not selected to serve on the jury should also be reimbursed at 20¢ per mile for their round trip mileage to and from the court and be paid a fee in half day increments of \$8.00.*

B. Procedure

(1) Jury Fee Form

- (a) Juror Fees Form is filled out by the Clerk of Court as the prospective jurors report to the court.
- (b) When individual jurors report to the Clerk's office on the day of the trial, the Clerk of Court shall request them to state the number of miles to and from the court from their home. That number is noted on the form for each juror.

* Title 25, Code of Federal Regulations § 7(c) "Juries" requires that each juror who serves upon a jury shall be entitled to a fee not less than the federal hourly minimum wage, plus fifteen cents per mile travel costs. Each juror shall receive pay for a full day (8 hours) for any portion of a day served.

- (c) After inserting the number of miles on the form, request each juror to sign the form on the same line as his/her mileage total.
- (d) Calculate the mileage fee (.20 x number of miles)
- (e) All persons who report for jury duty will be paid mileage.
- (f) After jury selection is completed or after the trial (when the Clerk knows which jurors were selected to serve) the Clerk must fill in the amount of the jury fee to be paid.
 - (i) Jurors who report for jury duty but are not selected to serve shall receive a fee in half day increments of \$8.00.
 - (ii) Jurors who are selected and serve on a jury shall receive \$16.00.
 - (iii) Calculate juror fees.
- (g) Total mileage and jury fees across for each line to get the amount to be paid to each juror.
- (h) Total down the total column to reach the grand total for jury fees to be submitted to the tribal accounting office.
- (i) Submit the Jury Fees Form along with payment vouchers as soon as possible after the trial so that delay in payment is as short as possible.
- (j) Explain to each juror or tell them as a group that payment will come directly to them by mail from the tribal accounting office and may take two or more weeks.

MENOMINEE TRIBAL COURTS

JURY FEES

Juror Sign Here

Number of
MilesRoundtrip

AMOUNT TO BE PAID

<u>Mileage</u>	<u>Jury Fee</u>	<u>Total</u>
----------------	-----------------	--------------

[illegible]

Date _____

Verified by:

Court Clerk

Approved by:

July 1982 Form Number 12

33.

Chief Justice

V. Assessing Jury Costs

Civil Cases

The Menominee Rules of Procedure for Use in Civil Jury Trials, § A:, state:

- (A) That any person accused of an offense not punishable by imprisonment, shall have such right only at such person's own expense. The jury shall not be less than six (6) persons.


Rule 24(c):

Costs. The Tribal Court may, in its discretion, assess the accruing costs of the case against the party or parties against whom judgment is given.*

Criminal Cases

There is no provision in the criminal rules allowing jury costs to be assessed against defendants.

* Such costs may include, but are not limited to: witness fees, juror fees, cost of transcripts, copying, and service fees.



Guide for Trial Jurors

GUIDE FOR TRIAL JURORS

Purpose of this Guide

The purpose of this handbook is to acquaint jurors with a few of the methods of procedure in the Menominee Tribal Courts, to tell them something about the nature of their work and its importance, their duties, responsibilities, and the meaning of the terms used in court. Nothing in this handbook is to be regarded by jurors as instructions of law to be applied by them in any case in which they serve. The judge will instruct the jury in each separate case as to the law of that case. Jurors must follow only the instructions of law given to them by the trial judge in each particular case.

LIST OF PERSONNEL AND THEIR FUNCTIONS IN COURT

- 1) Judge - an officer who is appointed to administer the law in a court of justice.
- 2) Prosecutor - the prosecuting officer who represents the Menominee Tribe in criminal trials.
- 3) Plaintiff - the party who complains or sues in a civil action.
- 4) Defendant - the party summoned to answer a charge or complaint in civil or criminal law; the party against whom an action or suit is filed.
- 5) Lawyer/Advocate (Attorney, Counsel) - the legal representative of a party in a trial.
- 6) Bailiff - An administrative officer of the court who attends to the needs of the Judge, jurors, witnesses, and court.
- 7) Court Reporter - a person responsible for the taking and transcribing of formal or official presentations of facts, evidence, and legal procedures in a trial.
- 8) Witness - a person who gives testimony concerning the issue being tried.
- 9) Court Clerk - a staff person from the Clerk of Court's office.

Selection of the Jury Panel

The jury panel, of which you are a member, is selected by lot from all the names of eligible resident voters.

Excuses from Jury Service

Most of you must serve at a financial sacrifice, but few who read this handbook and thoughtfully consider the privilege available to them will ask to be excused from service. In fairness to any who feel they must be excused, however, the system is as follows:

The Chief Justice of the Tribal Court has been authorized, upon personal request to the clerk, to excuse the following:

Eligible persons who are summoned may be excused from jury service only if:

- Their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors and they are excused for this reason by a judge; or
- They request to be excused because their service would be a continuing hardship to them or to members of the public, or they have been called for jury service during the one (1) year preceding their summons, and they are excused by a judge or duly authorized court officer.

Importance of Jury Service

Jurors perform a vital role in the reservation system of justice. The protection of our rights and liberties is largely achieved through the teamwork of Judge and jury who, working together in a common effort, put into practice the principles of our great heritage of freedom. The Judge determines the law to be applied in the case while the jury decides the facts. Thus, in a very important way, jurors become a part of the court itself.

Efficient jurors are men and women of sound judgment, absolute honesty, and a complete sense of fairness. Jury service is a high duty of Tribal Membership. The juror aids in the maintenance of law and order and upholds justice among his fellow men. His greatest reward is the knowledge that he has discharged this duty faithfully, honorably, and well. In addition to determining and adjusting property rights, jurors may also be asked to decide questions involving a crime for which a person may be confined in jail. In a very real sense, therefore, the people must rely upon jurors for the protection of life, liberty, and the pursuit of happiness.

A CIVIL CASE

Let us suppose you are called to help decide the case of Joe Bush v. Tom Green. Joe Bush would be the person who begins the case and he is called the plaintiff. Tom Green would be called the defendant.

The Voir Dire Examination

The case is called for trial after the pleadings are prepared. The plaintiff, the defendant, and their lawyers or advocates are in the courtroom. A panel of jurors is called. This panel may include a number of jurors from whom six will be selected to try the case. Alternate jurors in addition to the six may be chosen to take the place of jurors who may become ill during the trial.

The panel members are sworn to answer questions about their qualifications to sit as jurors in the case. This questioning process is called the voir dire. This is an examination conducted by the Judge or by counsel and sometimes by both. A deliberately untruthful answer to any fair question could result in serious punishment to the person making it.

The voir dire examination opens with a short statement about the case. The purpose is to inform the jurors of what the case is about and to identify the parties and their lawyers or advocates.

Questions are then asked to find out whether anyone on the panel has any personal interest in the case or knows of any reason why he cannot render an impartial verdict. The court also wants to know whether any members of the panel is related or personally acquainted with the parties. Other questions will determine whether any panel member has a prejudice or feeling that might influence him. Any juror having knowledge of the case should tell the judge.

Parties on either side may ask that a member of the panel be excused. These requests, or demands, are called challenges.

A person may be challenged for cause if the examination shows he might be prejudiced. The Judge will excuse him from the panel if the cause given in challenge is sufficient. There is no limit to the number of challenges for cause which either party may make.

The parties also have a right to a certain number of challenges for which no cause is necessary. These are peremptory challenges. Each side has three peremptory challenges. The peremptory challenge is a legal right long recognized by law as a means of giving both sides some choice in the make-up of a jury. Jurors should clearly understand that being eliminated from the jury panel by a peremptory challenge is no reflection upon their ability or integrity.

The Juror's Oath

After the jurors are selected, they are sworn to try the case according to the evidence given by the witnesses and the instructions that will be given by the court.

The Seven Stages of Trial

The trial proceeds when the jury has been sworn. There are usually seven stages of trial in civil cases. They are:

- (1) The opening statements of the lawyers or parties if they are presenting their own case. Sometimes the opening statements are omitted.
- (2) Plaintiff calls witnesses and produces evidence to prove his case.
- (3) Defendant may call witnesses and produce evidence to disprove the plaintiff's case and to prove the defendant's claims.
- (4) Plaintiff may again call witnesses to disprove what was said by the defendant's witnesses.

(5) Defendant may again call witnesses to disprove this last testimony.

(6) The judge instructs the jury as to the law.

(7) Arguments are made by the lawyers and parties, or advocates on each side.

During the trial, witnesses called by either side may be cross-examined by the lawyers on the other side.

Throughout the trial, the Judge may be asked in the presence or absence of the jury to decide questions of law. Usually these questions concern objections to testimony that either side wants to present. The law requires that the Magistrate decide such questions.

A ruling by the Judge does not indicate he is taking sides. He is merely saying, in effect, that the law does, or else does not, permit that question to be asked.

Final Arguments

After the evidence is completed, the parties or advocates may discuss the evidence in their arguments. This helps the jurors recall testimony that might have slipped from their memory. The chief purpose of the arguments is to arrange the evidence in logical order. The lawyers fit the different parts of the testimony together and connect up the facts. It must be remembered that each side may present a view of the case that is most favorable to their case. These arguments or statements are not evidence, only each side's interpretation of the evidence.

The Instructions to the Jury

The instructions of a Judge to a jury are statements of the rules of law. It is the jury's duty to reach its own conclusion upon the evidence. As to the law, the judge's instructions control. You will apply the law, as given, to the facts as you find them to be from the evidence.

The Criminal Case

The person charged with violating the law is the defendant. The case will arise from an alleged violation of ordinances of the Menominee Tribe. The prosecution will be based upon a complaint signed by some officer or citizen. If more than one offence is charged, each will be set forth in a separate count.

After the complaint is filed, the defendant appears in open court and the charge is made known to the defendant. He is asked whether he pleads "guilty" or "not guilty". This procedure is called the arraignment.

No trial is needed if the defendant pleads "guilty" and says he committed the crime. But if he pleads "not guilty" the defendant will be placed on trial.

The jury in a criminal case has only to determine whether the defendant is guilty or not guilty as to each charge against him. The jury, in determining guilt, finds the facts and the Magistrate tells the jury what is the law. What happens after the verdict is not for the jury but is the sole responsibility of the judge.

The jury must consider separately each of the charges against the defendant. It may find him not guilty of any of the charges, or guilty of all of the charges, or guilty of some of the charges and not guilty of others.

Courtroom Etiquette

The court session begins when the bailiff calls for order. Everyone in the court arises. The Judge takes his place on the bench and the bailiff announces the opening of court. When court adjourns, a similar procedure may be used.

Common courtesy and politeness are safe guides as to the way jurors should act. Of course, no juror will read a newspaper or magazine in the courtroom. He will not carry on a conversation with another juror in the courtroom during the trial.

Conduct of the Jury During the Trial

Each juror should give close attention to the testimony. He is sworn to follow the court's instructions. He must render a verdict according to his best judgment.

Jurors should keep an open mind. They should not discuss the case before the testimony is completed and the case is submitted to them. Human experience shows that once a person expresses his views he hesitates to change them. Therefore, it is wise for a juror not to express his views until the entire story has been told.

Jurors are expected to use knowledge they possess in common with men in general. But they are not to rely on any private sources of information. Thus they should be careful, during the trial, not to discuss the case at home or elsewhere.

If it develops during the trial that a juror learns out of court some fact about the case, he should inform the Judge. He should not mention any such fact in the jury room.

Individual jurors should never inspect the scene of an accident or of any event in the case. If an inspection is necessary, the judge will have the jurors go as a group to the scene.

Jurors must not talk about the case with others not on the jury and must not read about the case in the newspapers. They should avoid radio and television broadcasts that might mention the case. The jury's verdict must be based on nothing else but the evidence before the court.

If any outsider attempts to talk with a juror about a case in which he is sitting, the juror should do the following:

- (1) Tell the person it is improper for a juror to discuss the case or receive information expect in the courtroom.
- (2) Refuse to listen if the outsider persists.
- (3) Report the incident at once to the Judge.

In the Jury Room

After the jurors hear the evidence, the instructions of the court and the arguments of counsel, they retire to their jury room and first elect their foreman. They should then enter upon their discussion with open minds. They should freely exchange views and should not hesitate to change their opinions if they are shown to be wrong.

The jurors have a duty to give full consideration to the opinion of their fellow jurors. They should try to reach a verdict whenever possible. However, no juror is required to give up any opinion which he is convinced is correct.

If the jury is unable to reach a unanimous verdict, a majority of jurors must agree upon the verdict.

The members of the jury are sworn to pass judgment on the facts in a particular case. They violate their oath if they render their decision on the basis of the effect their verdict may have on other situations.

After the Trial

Ordinarily, the jurors need not tell anyone how they arrive at a verdict. What occurs in the jury room may remain secret. Only if the Judge orders a juror to reveal such matters need there be a disclosure.

Convenience of Jurors

It is intended that your service be as enjoyable as possible. The court attempts to have only such delays as the necessities of their duties require. Occasionally matters of law have to be discussed between the court and the parties. When it appears that only brief discussions are required, they may be done quietly at the bench. In this manner you are saved the inconvenience of going to your jury room.

If you cannot hear a witness or need to go to the rest room, feel free to raise your hand and let the Judge know. If in doubt about your rights, present your question to the bailiff so that he can pass it on to the judge.

Ordinarily, cases will be scheduled so that you will not be asked to serve on more than one case. The average case does not take more than one (1) day for trial and, except in rare instances, you will be allowed to return home each evening.

Payment for Jury Service

Jurors who are called for jury service will be reimbursed for actual round trip mileage to and from the court. Jurors who serve will receive pay at the rate of \$16 per day. Jurors who are called, but do not serve, will be paid a minimum fee.

Conclusion

The performance of jury service is the fulfillment of a most important civic obligation. Conscientious service brings its own reward in the satisfaction of a significant task well done. Jury work is the most valuable public service that the average citizen has an opportunity to perform.

You should now have a good understanding of how the courts do their work and of the privilege you have to participate in the administration of justice.

Any juror should realize a quiet importance of pride from his service. He should render justice without any regard to race, color, or creed.

LEGAL TERMINOLOGY

Abatement (reduction or decrease): The proportionate reduction of a claim when the fund used for payment is insufficient to meet the full amount of the claim. Also, the termination of a lawsuit due, for instance, to the death of a party.

Ab Initio (Latin, "from the beginning"): A transaction or document from its inception. For example, an insurance policy may be held to be invalid ab initio or from the purported issuance of the policy.

Abstract of Title: A summary of deeds and other documents comprising the history of a title to land.

Accord and Satisfaction: An agreement between two or more persons which settles a disputed claim or lawsuit through the payment of some amount or the performance of some action in satisfaction of the asserted claim.

Acquittal: A release from an obligation when used in reference to contracts. In criminal law, a person is acquitted if the charge against him is dismissed either through a verdict of acquittal or by some formal and conclusive legal procedure.

Action (Also called a suit): A proceeding in a court of law by which one party sues another to secure the enforcement or protection of a right or the redress of a wrong. Civil actions concern private rights and injuries. A criminal action is taken to redress a public wrong.

Additur: The power of trial court to assess damage or increase amount of inadequate award made by jury verdict, as a condition of denial of motion for a new trial.

Ademption: A cancellation of a legacy. It occurs when an action of the testator is interpreted as an intentional revocation of the legacy.

Adjudication: Normally the pronouncement of the judgment or decree in a court case. In bankruptcy proceedings, it refers to the court order declaring that the debtor is bankrupt.

Administrative Law: A branch of law governing procedure before various government agencies of the executive and legislative branch.

Administrative Procedures: Managing or conducting, directing by which a legal right is enforced.

Administrator: The person appointed by a court to settle an estate, usually when there is no will. When it is a woman, the word "administratrix" is used.

Adverse Possession: A means of acquiring title to property through occupancy for a specified number of years.

Advisory Verdict: Counseling, suggesting or advising, but not imperative or conclusive, a verdict or an issue out of Chancery is advisory.

Affidavit: A written and sworn statement witnessed by a notary public or another official possessing the authority to administer oaths.

Allmony: The sustenance or support of the wife by her divorced husband for maintenance, while they are separated or after they are divorced.

A Mensa Et Thoro: A divorce by which the parties are legally separated. It is distinct from a divorce a vinculo which completely dissolves or breaks the bonds of matrimony.

Amicus Curiae (Latin, "a friend of the court"): A person who has no legal right to appear before the court in a certain proceeding. However, the court allows him to introduce evidence, argument, or authority because he has a collateral interest in the case.

Annual Percentage Rate: A term required to be disclosed on all credit transactions under the Truth in Lending Law; it describes the cost, in percentage, of having credit.

Annulment: Formal invalidation of a marriage by means of a court decree declaring that a marriage is a nullity from the beginning.

Answer: It is a pleading, by which defendant, in a suit of law endeavors to resist the plaintiff demand by allegation of facts.

Appointed Counsel: Attorneys appointed by a Judge or Court to represent the defendant, usually in case of an indigent.

Approach the Bench: During course of trial, attorneys of both plaintiff and defendant discuss with the Judge some matter of the trial, not discussed in public.

Arraignment: To bring a person to the bar of the Court to answer the matter charged upon him in the indictment.

Array: The whole body of jurors summoned to attend a court. The order in which jurors' names are ranked in the panel containing them.

Arrest: A legally authorized act by which a person is deprived of his liberty.

Arrest of Judgment: The act of postponing a judgment.

Articles of Agreement: A written statement comprising the terms of an agreement.

Assignment: The legal transfer of a claim, a right, or an interest to property to another person.

Attachment: The seizure of persons or property by means of a legal writ, summons, or another judicial order.

Attestation of a Will: The act of subscribing one's name as a witness to the execution of a will.

Attorney-At-Law: An officer of the court and a member of the bar. He is empowered to give legal advice and to conduct proceedings on behalf of others.

Attorney-In-Fact: A person who is authorized by another to act in the latter's behalf. An attorney-in-fact is not necessarily a member of the bar.

Authentication: In the law of evidence, the act or mode of giving authority or legal authenticity to a statute, record or certified copy, so as to render it legally admissible as evidence.

Averment: A statement of facts in a legal pleading.

Ball: To procure the release of a person from legal custody by undertaking he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court.

Ballee: The legal term for a person to whom property is entrusted. It has no relation to criminal bail.

Bailment: The temporary transfer of personal property by one person in trust to another. The property is delivered for a special purpose with the understanding that it will be returned when the purpose of the bailment is carried out.

Bearer Paper: A negotiable instrument which can be transferred by delivery. It does not require endorsement.

Bench Warrant: A process issued by the court for the arrest of a person guilty of contempt or indicted for a crime.

Beneficiary: The person named in a will or trust to receive property.

Bequeath: The legal word which refers to the giving of personal property by will.

Bill of Costs: An itemized statement of authorized allowances and expenses that can be charged to the unsuccessful party to a lawsuit.

Bill of Indictment (or indictment): A written legal document that accuses a person of a crime.

Bill of Particulars: A document listing the details of a claim for which a suit is brought.

Bill of Sale: A written statement by which one person transfers to another his rights to personal property.

Bona Fide: A Latin phrase meaning that one acts "in good faith," without intention to defraud or deceive.

Bond: A formal certificate of a debt; also defined as an interest-bearing certificate of a public or private debt.

Burden of Proof: The duty of a party in a civil lawsuit to present sufficient proof to establish a disputed fact.

Calendar (or trial list): The list of cases to be tried during a court term.

Capacity: The ability recognized by law to take legal action.

Capias (Latin): A class of writs that authorize a court officer to take a defendant into custody or, in other words, to arrest him.

Carrier: Commonly, one who is hired to transport persons or property.

Case Law: A branch of law consisting of court decisions. It is distinct from statutes and other sources of law.

Causa Mortis: A Latin phrase meaning "in contemplation of death", usually applied in connection with gifts made shortly before the donor's death.

Cause of Action: The legal basis for a lawsuit by one person against another.

Caveat Emptor: A Latin phrase meaning "let the buyer beware."

Caveat Venditor: A Latin phrase meaning "let the seller beware."

Certiorari (Latin, "to be made certain"): A legal proceeding by which a court review the decision of a lower court or governmental agency.

Cestui Qui Trust (Latin): The "beneficiary of a trust."

Challenge: The party's right to object to a juror during the selection of the jury for a trial.

Chancery: Equitable jurisdiction, the system of jurisprudence administered in Court of equity.

Charge: An accusation that a person has committed a crime. In a jury trial, the charge constitutes instructions

on law given by the judge to the jury at the end of the trial.

Chattel: An item of personal property as distinguished in a legal proceeding.

Citation: An order directing a person to appear in a legal proceeding.

Civil Contempt: Consist in the failure to do something which party is ordered by the Court to do for the benefit of another party to the proceeding before the Court.

Clerk of Court: An officer in charge of the records and proceedings of a court.

Code Pleading: Plead the material facts, which may be a code of facts.

Codicil: A document, executed with all the formality of a will, used to amend the provisions of an existing will.

Collateral Estoppel: The collateral determination of a question by a court having general jurisdiction of the subject, conclusiveness of judgment in prior action where subsequent action is upon a difference cause of action.

Comity of States: The practice by which the courts of one state recognize the laws and judicial decisions of another state.

Common Law: The modern civil law, the canon law and other systems body of law and juristic theory which was originated developed and formulated and is administered in England.

Commission: A person who is directed by government or court who is charged with the administration of the laws related to some particular subject matter.

Communtation: A change from a greater to a lesser punishment in criminal law.

Competency (Witnesses) (Defendants): In the law of evidence, the presence of those characteristics, or the absence of those disabilities which render a witness legally fit, qualified to give testimony.

Complaint: It is the first or initiatory pleading on the part of the plaintiff in civil action. It corresponds to the declaration in common law practice. Identifies plaintiff and defendant.

Condemnation: The process by which property of a private owner is taken for public use, without his consent, but upon the award and payment of just compensation.

Consecutive Sentences: Sentences imposed by the Court, succeeding one another in regular order.

Conspiracy: In criminal law, a combination between two or more persons formed by their joint efforts or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

Construction: The process of determining the true meaning of a legal document, such as a "contract" or a "will".

Contract: An agreement upon sufficient consideration to do or not to do a particular thing, also creating an obligation.

Contempt: The disobedience of the rules, orders, and procedures of a court or a legislative body.

Costs: A pecuniary allowance made to the successful party for his expenses in prosecuting or defending a suit.

Conveyance: A transfer of a right to property; usually an interest in real property.

Corpus Delicti (Latin, "body of a crime"): The necessary substantial evidence or proof that a crime has been committed.

Credit: The sale of property or services in exchange for a promise of deferred payment.

Creditor: A person to whom a debt is owing.

Crime: An act committed or omitted in violation of a public law or an act in violation of those duties which an individual owes to the community.

Criminal Contempt: Proceeding brought to preserve the power and vindicate the dignity and integrity of the Court and to punish for disobedience of its order.

Damages: Compensation recovered through the court by an individual who has sustained injury to his person, property, or rights because of an illegal act of another.

Decree: A final judgment or determination of a court.

Deed: A written document signed by the owner of real estate which transfers ownership to another person.

De Facto: A Latin phrase meaning "in fact," usually used to describe a situation which exists in fact, irrespective of any design or operation of law.

Default: The failure of a party to a legal proceeding to perform an act required by law, as in the failure to appear and defend a lawsuit.

De Jure: A Latin phrase meaning "in accordance with law." For example, a corporation may have a valid charter and may be acting within its powers. It is, therefore, a de jure corporation.

Delinquency: Failure, state or condition of one who has failed to perform his duty. In civil law is one who has been guilty of some crime.

Demurrer: A pleading by one party to a legal action that admits the truth of the matter alleged by the other party but declares it is insufficient in law to sustain the claim.

Deponent: A person who makes a written statement under oath.

Deposition: The written testimony of a witness. It is transcribed according to law while the person is under oath but not in open court.

Descent: The inheritance of real property when the owner dies without a will.

Devisee: A person who is given real property under a will.

Directed Verdict: Immediate connection or relation to the means of the decision of a jury and not the decision of a court.

Disability: The absence of legal capability to carry out an act.

Discovery: The disclosure by the defendant of facts, titles or other things, which are in his exclusive knowledge and which are necessary to the party seeking the discovery as a part of a cause or action pending.

Distribution: The allocation and delivery of a decedent's property to his heirs or those named in a will.

Docket: A book containing an entry in brief of all the important acts done in court in the conduct of each case, a court calendar prepared by the clerk for use of the court or bar.

Due Process of Law: The required procedures for depriving someone of life, liberty, or property through governmental action. These procedures are guaranteed by the U.S. Constitution.

Easement: The right of the owner of one piece of real estate to use the land of his neighbor for a special purpose.

Ejectment: The legal remedy available to a landowner for recovery of real estate from persons who have no right to be on it.

Eminent Domain: The power of the state to appropriate private property for public use.

Enjoin: To require a person by a writ of injunction to perform or to desist from an act.

Entrapment: The act of officers or agents of the government in inducing a person to commit a crime, not contemplated by him, for the purpose of instituting a criminal prosecution against him.

Equity: A system of jurisprudence or branch of remedial justice, an elaborate system of rules and process, render the administration of justice more complete affording relief.

Erle R.R. v. Tompkins: "The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply".

Escheat: An old English term used to describe the right of the state to take property when there are no heirs surviving the owner.

Estate: All property, real or personal, tangible or intangible, in which a person has an interest, usually referring to the total a person has at his death.

Estoppel: Arises when one is precluded and forbidden by law to speak against his own act or deed.

Et Al: A Latin phrase meaning "and others."

Et Ux: A Latin phrase meaning "and wife."

Evidence: Any species of proof legally presented at the trial of an issue by the acts of the parties and through the medium of witness, records, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.

Exception: A legal term for a formal objection to the action or ruling of the court during a trial.

Exclusionary Rule: Protect persons of his indefeasible right of personal security, unlawful search and seizures.

Execution: The completion, fulfillment, carrying out some act, a writ forcing payment such as on a money judgment. In common law execution is said to be final.

Executor: The person named in a will to carry out its terms. When it is a woman, the word "executrix" is used.

Ex Parte: A Latin phrase meaning "on one side only". Usually, it describes a proceeding in which only one side has made application and only one side is heard.

Family Car Doctrine: A doctrine by which the head of the household is liable for injuries caused by the negligence of other members of his household while operating the family car. Not all states accept this doctrine.

Felony: A serious crime, usually punishable by imprisonment or death, as distinct from a minor crime or misdemeanor.

Fiduciary: A person holding property in a trust capacity for the benefit of another. Executors, guardians, and trustees are fiduciaries.

Finance Charge: A term required to be disclosed on all credit transactions under the Truth in Lending Law; it describes the total of all costs which the consumer must pay for obtaining credit.

Findings and Conclusions: A decision reached as a result of a judicial examination by a court jury, etc., and also applies to the result reached by the Judge.

Grand Jury: A body of local citizens who hear an ex parte presentation of evidence by a prosecuting attorney and who must then determine whether the evidence is sufficient to indict or officially charge the suspect with a specific crime.

Garnishment: A procedure through which a debtor's property is attached by a creditor while it is in the hands of a third person, such as the debtor's employer.

Habeas Corpus: A Latin phrase meaning "have the body". It describes a proceeding by which a writ is issued to someone having custody of a person, ordering him to bring the prisoner to court to determine if he is being unlawfully detained.

Holographic Will: A will written, signed, and dated by the testator in his own handwriting.

Impartial Medical: Unbiased record of testimony pertaining, relating or belonging to the study and practice of medicine, brought in by Judge.

Impeachment of a Verdict: Discrediting of the jury, "quotation verdict" to overthrow, set aside.

Indemnity: An agreement by which one person promises to protect or to reimburse another for loss or damages.

Indictment: An accusation in writing found and presented to a grand jury legally convoked and sworn to the court in which a person therein named has done act or been guilty of some omission.

Information: A written document charging a person with a criminal offense without the intervention of a grand jury.

Injunction: Requiring person to whom it is directed to do or refrain from doing a particular thing.

Inquest: A judicial inquiry.

Insanity: In law such a want of reason, memory, and intelligence as prevents a man from comprehending the nature and consequences of his acts.

Instructions: Preliminary interrogation of witness, preparation of a document containing a detailed statement of the case.

Issue: One of the law raised by demurrer to the Complaint, as well as one raised by the answer.

Joint Tenancy: Joint tenants who own an equal interest in the same property, all of which passes to the survivor.

Judgment: The official decision of a court.

Judgment Creditor: The party in a lawsuit who has won a money judgment against his debtor.

Judgment Debtor: A person who owes the money judgment.

Judgment Lien: A lien binding the property, usually real estate, of a judgment debtor.

Judgment, N.O.V.: Not withstanding the verdict, a Judgment entered by order of the court for the plaintiff although there has been a verdict for the defendant.

Judicial Notice: The doctrine by which the court accepts certain matter without demanding evidence. Such matter includes state laws, historical events, geographical data, etc.

Jurisdiction: The legal authority of a court to hear a case or conduct other proceedings.

Justice of the Peace: A judicial officer having jurisdiction of a limited nature over minor cases, both civil and criminal.

Juvenile: A child or young person.

Legacy: A provision in a will which leaves certain personal property to a named individual. It is also known as a bequest.

Legatee: A person who is given personal property under a will.

Letters of Administration: Documents usually issued by a probate court giving an administrator the authority to administer the estate of the deceased person.

Letters of Guardianship: A court document that serves as a guardian's authority to act.

Letters Testamentary: Documents issued by a probate court giving a person named as executor in a will the authority to administer the estate of the person who made the will.

Levy: The seizure and sale of property by the court to satisfy a garnishment or judgment.

Liability: Responsibility, an obligation one is bound in law or justice to perform.

Lien: A claim against property.

Life Estate: A lifetime interest in property. This interest terminates upon the death of the individual.

Life Tenant: A person who holds a lifetime interest in property.

Lis Pendens (Latin, "Pending suit"): A notice advising those interested to examine the pending legal action.

Malfeasance: Performance of a wrongful act.

Mandamus: Command, name of writ which issues from court of superior jurisdiction and is directed to a private or municipal corporation, command performance of specific duty which relator is entitled to have performed.

Mandamus, Writ of: Is summary writ issued from court of competent jurisdiction to command performance of specific duty which relator is entitled to have performed.

Mandate: A command, order or direction, written or oral, which a court is authorized to give and a person is bound to obey.

Master: An officer of the court, who acts as an assistant to the judge. Also takes oaths and affidavits and acknowledgement of deeds.

Material Fact: One which is essential to the case defense and without which it could not be supported. One which tends to establish any issue raised.

Miranda Rule: Prior to any custodial interrogation; that is, questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of his freedom in any significant way, the person must be warned:

1. That he has a right to remain silent;
2. That any statement he does make may be used as evidence against him;
3. That he has a right to the presence of an attorney;
4. That if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.

Miranda Warning: Prior to any questioning by law enforcement officers, after taken into custody or deprived of his freedom, a person must be warned he may—remain silent, any statement may be used against him—right to attorney and if indigent court will provide one.

Misdemeanor: An act that violates public law. It is usually punishable by a fine or a short term of imprisonment.

Misfeasance: The improper performance of a lawful act.

Mistrial: A court proceeding that is terminated because of a procedural error.

Motion: An application for a rule or order made to a court or Judge. A formal mode which a member submits as a proposed measure.

Negligence: The doing of something which a reasonable and prudent man would not do.

No Bill: When endorsed by a grand jury or an indictment is equivalent to not found, not a true bill.

Nolle Prosequi: Latin. A formal entry upon record by the plaintiff in a civil suit or the prosecuting officer in a criminal action by which he will no further prosecute the case.

Nolo Contendere: (Latin, "I will not contest"): A plea similar to a plea of guilty; used only in a criminal action.

Notary Public: A public official whose duty is to administer oaths and witness numerous types of official documents.

Notice Pleading: It proceeds from the plaintiff and warns the defendant that he must plead to the declaration or complaint within a prescribed time.

Novation: A new debt, contract, or obligation that supersedes one previously made.

Nuisance: A tort arising from a person's use of his property; generally when he causes annoyance, damage, or danger to others by such use.

Nuncupative Will: An oral will by which a person disposes of his property in the event of his death. In many states this type of will has been ruled invalid by state statute.

Offer of Proof: Made by the person who is to make the promise and it must be made to the person to whom the promise is made.

Option: (in contract law): A privilege extended to one person giving him the opportunity to purchase another's property at a specified price within a designated time limit.

Order: A written direction of a court or a judge, other than a judgment.

Order to Show Cause: An order requiring defendant to appear and show cause why a previously issued order has not been complied with.

Orientation: (Jurors) Presentation by the judge informing jurors of their duties and obligations.

Per Capita: (Latin, "by the head"): A method of dividing property left by a decedent. The property is distributed among the number of individuals equally related to the decedent so that each receives an equal share.

Per Stirpes (Latin, "by the root"): A class or group takes and divides amongst themselves the share their ancestor, such as a parent, would have received.

Petition: An application made to the court, where there are no parties in opposition, or for authority to do some act which requires the action of the court.

Petit Jury: A body of six local citizens who are chosen to hear and decide the verdict in civil and criminal cases.

Plea: (or answer) A document filed by the defendant to contest the claim of the plaintiff. It admits or denies the various claims set forth in the complaint.

Plea Bargaining: Possibly better referred to as plea negotiating, for the plea of guilty to a lesser sentence.

Precedent: A principle of law actually presented to a court for consideration, has been declared to serve as a rule for future guidance in the same or analogous cases.

Pleading: The process by which parties to a civil lawsuit present written statements of their respective contentions.

Pledge: The transfer of title or possession of personal property to a creditor as security for a debt.

Preliminary Hearing: Introductory initiatory hearing takes place before magistrate clothed with judicial functions and sitting without a jury.

Presumptions: Conclusions reached by means of proved circumstances.

Prima Facie: A case which has proceeded upon sufficient proof to that stage where it will support findings if evidence to the contrary is disregarded.

Probable Cause: Having more evidence for than against an apparent state of facts found to exist upon reasonable inquiry.

Probate: The judicial procedure to determine that a certain document claimed to be a will of the decedent is in fact valid and properly executed and to supervise administration and distribution of the estate.

Proof: Is the perfection of evidence, any factor circumstance which leads to the affirmative or negative persuasion of the mind of a judge or jury.

Proximate Cause: That which in the ordinary cause of events, unbroken by another cause, produces an injury and without which the injury would not have taken place.

Qualifications Commission: The possession by an individual of the qualities which are legally necessary to render him eligible to fill an office or to perform a public duty or function.

Quitclaim Deed: A document by which a person transfers all of his interest in a piece of real estate. It does not include a warranty of title, nor does it profess that the title is valid.

Rasmussen Hearing: A hearing to test the constitutionality of statements made by the defendant, in nature of a confession and items seized from the defendant. A Minnesota proceeding—A pre-trial constitutional hearing.

Ready Calendar: Calendar fitted, arranged, or placed for immediate use.

Reciprocal Support Act: Agreement usually between states whereby the responding state takes action to collect payments or dues for the initiating state (welfare).

Recognizance: An obligation of record, entered before some court of record, with condition to do some particular as to appear.

Referee: A person to whom a cause pending in a court is referred by the court, to take testimony, hear the parties and report thereon to the court.

Remand: To recommit a case to a lower court for corrective action.

Removal: In a broad sense, the transfer of a person or thing from one place to another.

Remittitur: An entry made on record in case where a jury has given greater damage than a plaintiff has declared for.

Replevin: A legal action instituted to recover possession of property that was unlawfully taken or detained.

Replication: (or reply): A pleading filed by the plaintiff to answer the material set forth in the defendant's plea.

Residuary Estate: The portion of a decedent's estate that is left after the payment of specific legacies, debts, and estate administration expenses.

Res Judicata: Designates a point or question or subject-matter which was in controversy or dispute and has been authoritatively settled by decision of court.

Reversed: The annulling or making void a judgment on account of some error or irregularity.

Review: Reconsideration, re-examine judicially consideration for purpose of correction.

Revocation of a Will: An act by a person who has made a will indicating his intention that the will shall no longer be effective.

Rule: A standard or regulation to govern judicial and other procedures.

Satisfaction of Judgment: A document stating that a recorded judgment has been paid.

Seisin: The ownership or the right to immediate possession of land or an interest in real estate.

Sentencing Alternatives: Judgment pronounced by the Court or Judge upon the defendant in a criminal prosecution with one or the other of two things, choice.

Specific Performance: Performance of a contract in the specific form in which it was made or according to the precise terms agreed upon.

Speedy Trial: A trial conducted according to fixed rules, regulations and proceedings of law free from unreasonable delay.

Spreigl Hearing: Pre-trial hearing at which the advisability of evidence of defendant's commission of other crimes is tested.

Sequestration: A writ authorizing the taking into custody of the law of the real and personal estates of the defendant who is in contempt.

Stare Decisis: Doctrine that when the court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle and apply it to all future cases.

Statute: A law passed by a legislative body.

Statute of Frauds: A series of legal provisions requiring certain contracts to be in writing.

Statute of Limitation: A law prescribing that a suit on certain types of claims must be brought within a specific time period.

Stipulation: A material article in an Agreement to take depositions, to waive objections, to admit certain facts—an agreement between counsel respecting business before the court.

Subpoena: A process to cause a witness to appear and give testimony, commanding him to lay aside all pretense and excuses to appear before a court at a time therein.

Subpoena Duces Tecum: A process by which the court commands a witness who has in his possession some document that is pertinent to the issue of a pending controversy.

Substantive Law: The branch of law that prescribes legal rights.

Summary Judgment: Assuming the best possible state of fact in favor of the person against whom the judgment is entered. Rule 56. Minn. Rule of Court.

Summons: A written document notifying the defendant that an action has been started against him and requiring him to appear in court within a specified length of time to answer complaint.

Support: That which furnishes a livelihood, a source or means of living, a substance.

Suppress Evidence: To prohibit, put down or prevent witnesses' records, documents at the trial of an issue.

Surrogate: The title sometimes given to the judge who presides in the court where estates of decedents are administered.

Temporary Restraining Order: An order which may issue upon the filing of an application for an injunction forbidding the defendant to do the threatened act until a hearing can be had.

Testator: The person making the will. When it is a woman, the word "testatrix" is used.

Title: Evidence of a person's right to the ownership of property.

The Record: A written memorial of all acts and proceedings in an action or suit in a court of record. The history of the proceedings of the trial.

The Rule: A standard or regulation to govern judicial and other procedures.

Torrens Title System: A system under which, upon the landowner's application, the court may, after appropriate proceedings, direct the issuance of a certificate of title. With exceptions, this certificate is conclusive as to applicant's estate in land. This system is so called, the author being Sir Robert Torrens.

Tort: A wrong, other than a breach of contract committed upon the person or property of another.

Trial De Novo: Trial anew, afresh, a second time.

True Bill: The endorsement made by a grand jury upon a bill of indictment, when they find it sustained by the evidence laid before them and are satisfied of the truth of the accusation.

Trust: The holding of property by one person for the benefit of another.

Usuary: A term describing the imposition of an illegal rate of interest.

Venire: To come to appear in court.

Ventireman: A member of a panel of jurors.

Venue: The place where a legal proceeding takes place.

Verdict: A judge or jury's decision on a matter submitted to them in trial.

Verification: An affidavit of statement under oath confirming the contents of a document.

Voir Dire: To speak the truth, to test the competency of witnessjury.

Waiver: The act of intentionally abandoning a right, claim, or privilege.

Warrant: A writ or precept from an authority of the law directing the doing of an act.

Work-Product of the Lawyer: This concept embraces matters representing work done by the attorney in his professional capacity in the course of attorney-client relationship.

Writ: A court order requiring a public official to perform a specified act.

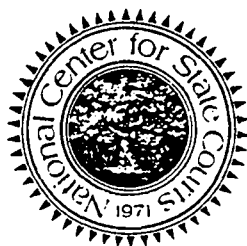


6.

TRIBAL CODE

North Central Regional Office

TRIBAL CODE CODIFICATION
PROCEDURES



National Center for State Courts
Suite 2601
American National Bank Building
5th & Minnesota Streets
St. Paul, Minnesota 55101

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TRIBAL CODE CODIFICATION PROCEDURES

I. CODIFICATION PROCESS

1. Existing Code or Ordinance Provision

The first step in a tribal code codification project is to collect copies of all existing ordinances, code provisions, and indexes. The tribe should also maintain a separate set of original codes and ordinances.

2. Administrative Ordinances

A tribal codified code should not contain copies of ordinances that are administrative in nature. Examples of these types of ordinances would include leases, attorney contract authorizations, authority to incur indebtedness, and annual budgets. These should be removed from the working copies for this project. These ordinances should be kept chronologically (by topic) in a separate folder or binder. Each topic should have an index.

3. Latest Code Provisions

Copies of ordinance or code provisions that are not the final versions, been repealed, or expired (e.g., emergency provisions) should be removed from the provisions being considered for codification. An index or list should be created for these provisions for later review before the final codified code is prepared.

Amendments to final code provisions should be substituted for amended sections.

4. Code History

The history of any code sections that have been amended or repealed should be noted at the end of an amended section or in place of a repealed section.

5. Codification Numbering System

A tribe should use a standard codification numbering system for ordinances instead of tracking subject areas by ordinance numbers.

Every ordinance passed by the Tribal Government should have a unique ordinance number (even amendments to previous ordinances). The history of an ordinance should be recorded at the end of each ordinance (or section, if amended).

With a standard codification numbering system, each ordinance would reference the appropriate number in the code system. The numbering system could be a combination of the chapter number, section number, subsection number, and any subdivision. Using the Table of Contents (Attachment A) and the index for Chapter 17 (Attachment B), such a numbering system would look like the following illustration:

	Chapter	Section	Sub-section	Sub-division
Number	17	2	2	a
Description	Regulatory Ordinances	Bingo	General Provisions	Licensing

The number for this portion of the code would look like 17-2-2(a). From this number the tribe would know the ordinance was referring to Chapter 17, Section 2, Subsection 2(a).

With this numbering system all code provisions would have a unique number. New chapters and sections could be added without changing previously numbered code provisions. Occasionally existing numbers may have to be revised if sections were repealed or there was a major revision to a chapter.

MENOMINEE INDIAN TRIBE OF WISCONSIN

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- 2-1 Authority of Menominee
- 2-2 Registration Requirements
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- 3-1 Words and Phrases Defined
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- 3-3 When Certificate of Title Required
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- 3-11 Lost, Stolen or Mutilated Certificaters
- 3-12 Fees

(Transfer of Title)

- 3-13 Transfer of Interest
- 3-14 Transfer to or from Dealer
- 3-15 Involuntary Transfer
- 3-16 Issuance of new Certificate

6. Code Chapters and Indexes

After the ordinance or code provisions have been sorted, amended and generally put into final version, they should be grouped by general topical areas. Each general area should be called a "chapter." See, Attachment A for sample listing of possible chapter headings. Each chapter should have a detailed index to the ordinances or code provisions in that chapter. See Attachment B for a sample of such an index.

The indexes to each chapter should not include reference to introductory comments in an ordinance or code provision. Only the substance portion of the code provision should be outlined. This may require the renumbering of certain sections to conform to the codification numbering system.

7. Ordinance to Renumber Existing Code Provisions

If a new numbering system is adopted, the tribe should pass a single ordinance converting numbers in existing ordinances to conform to the proposed system.

8. Final Codified Code

After all of the above steps have been completed and approved by the tribe, the resulting code binder has to be "cut and pasted" or retyped into a final version. If the code is to be retyped it is recommended that it be typed on word processing equipment so that later revisions can be made on the word processing equipment without major retyping of whole sections.

II. TRIBAL CODE MAINTENANCE PROCEDURES

1. Binder Distribution List

A major objective of a codification project is to assure that certain tribal offices and individuals are provided with a current tribal code binder. A list of these offices or individuals needs to be prepared.

Each office or person should be provided a specific binder number. The binder number should be noted on each binder. The distribution list and binder number will (as described later) be the basis for distributing updates and keeping track of who has a binder. See Exhibit 1 for a sample chart that might be used to keep track of the offices or individuals that have a binder.

A certain number of extra binders should be kept in the tribal offices in case additional binders need to be provided to new offices or to replace lost binders.

2. Binder Format

A binder should have three (3) rings and be large enough to accommodate at least 2" of inserts. The binder should have tabbed dividers for a Word and Phrases Index, each chapter, and update worksheets. Each chapter should have a separate detailed index followed by the code provision for that chapter. The pages in each chapter would be numbered with a number consisting of the chapter number and a sequential number (e.g., 13-1, 13-2, etc.). (This numbering system would allow for the insertion of additional pages without having to renumber the whole binder.)

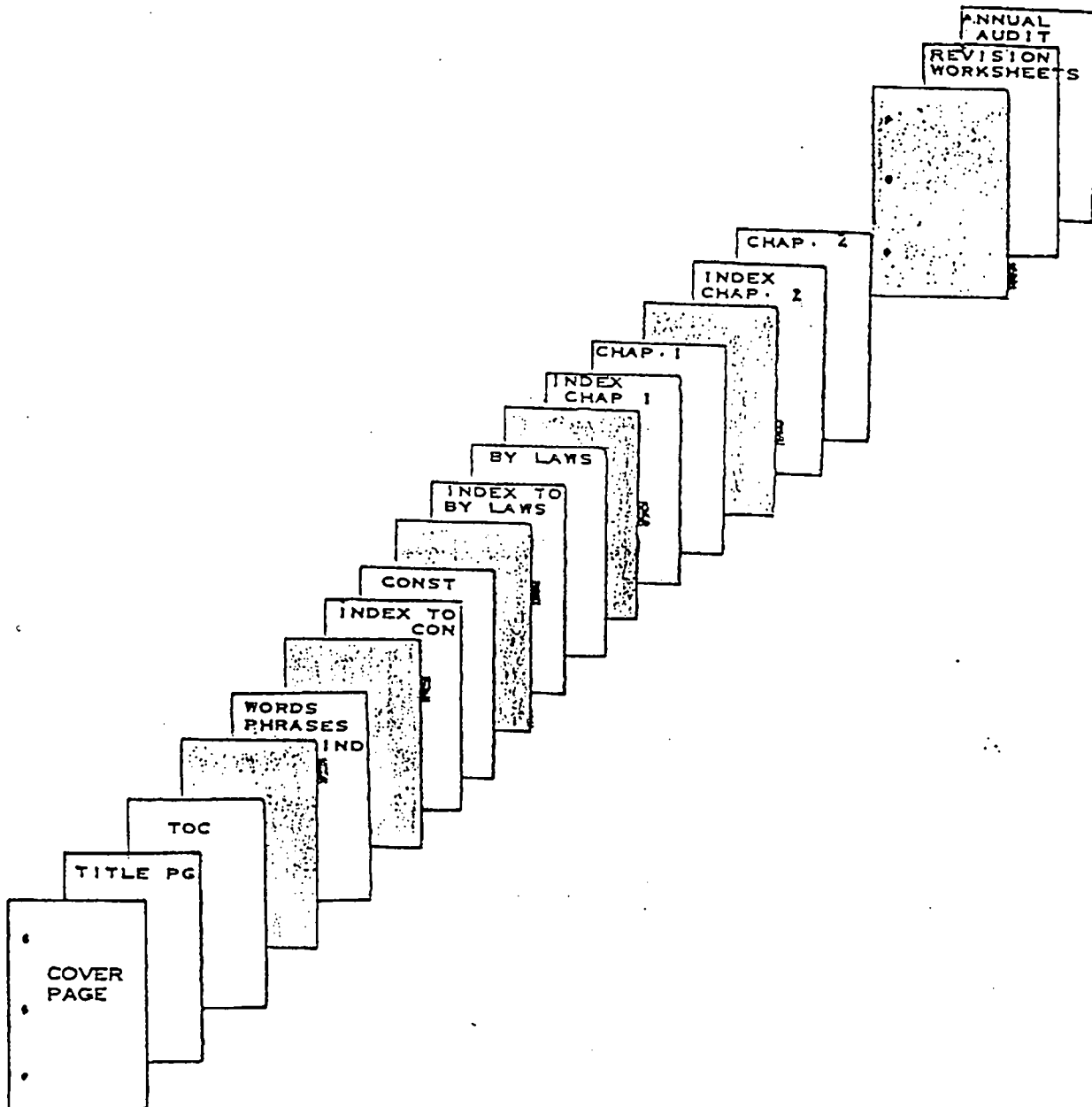
See Chart 1 for an illustration of how the pages and dividers will be arranged in the binder.

3. Word and Phrases Index

A set of compiled laws with many volumes frequently has an alphabetical index of words and phrases to help the reader locate specific topics. If the tribal code is not too large, a Table of Contents and Chapter Indexes will generally be sufficient. Nevertheless, it is recommended that a section be reserved in the binder for a future alpha index.

Attached is a sample page and Preface from the North Dakota State Code to illustrate how such an index would appear and be used. (See Exhibit 2.) After a codified code has been thoroughly reviewed, revised and/or expanded, a tribe may wish to develop such an index.

MENOMINEE TRIBAL CODE BINDER



North Dakota CENTURY CODE



Comprising an Index to Statutes of a General and Permanent Nature
Including the Laws Passed at the Forty-seventh
Session (1981) of the Legislative Assembly of the State of North Dakota

REPLACEMENT
VOLUME 14

GENERAL INDEX
1981 EDITION

PUBLISHED BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY
UNDER THE SUPERVISION OF
THE LEGISLATIVE COUNCIL AND THE SECRETARY OF STATE

THE ALLEN SMITH COMPANY
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1435 North Meridian Street
Indianapolis, Indiana 46202

PREFACE

This 1981 Edition of Replacement Volume 14 contains an index to the statutory text in the North Dakota Century Code, the provisions of the North Dakota Constitution, Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Appellate Procedure, Rules of Evidence, and Rules of Court. References are to chapters and sections of the Century Code and to articles and sections of the Constitution. The official abbreviations "N.D.R.Civ.P.," "N.D.R.Crim.P.," "N.D.R.App.P.," "N.D.R.Ev.," and "NDROC" are used for references to the rule numbers.

The index has been brought to date through the 1981 Legislative Assembly. References to repealed provisions have been deleted.

A feature continued in this year's index is the use of asterisks to indicate sections that are contained in the 1981 Pocket Supplements to the respective volumes. In the case of references to a chapter or group of sections, an asterisk indicates that the Pocket Supplement to the appropriate volume contains at least one of the sections referred to.

This volume replaces the 1979 Edition of Replacement Volume 14 of the Century Code as a guide to currently effective law. However, the user may find it advisable to preserve the 1979 index in the historical section of his library.

This index is oriented toward specific topics rather than toward areas of law. For example, the detailed index to the topic of divorce will be found under the boldface heading **DIVORCE** rather than under **DOMESTIC RELATIONS**.

Cross-references are used liberally throughout this index to facilitate the location of statutory material while keeping the index within manageable size. Most cross-reference lines also contain chapter or section references that tell the user the general location of the subject in the Code. As an example, under the boldface heading **DOMESTIC RELATIONS** the user will find the following line:

Divorce, 14-05—See **DIVORCE**

This tells the user, first, that the general topic is covered by Chapter 14-05 of the Code, and, second, that he can find a detailed index of the topic under the boldface heading **DIVORCE**.

An example of a different form of cross-reference will be found under the boldface heading **IRRIGATION DISTRICTS**, where the following line appears:

Taxation—See **Assessments**, above

This line tells the user that the topic of taxation, as it relates to irrigation districts, is indexed in detail under the subsidiary heading "Assessments" under the same boldface heading, i.e., **IRRIGATION DISTRICTS**.

It should be noted that references to definitions of words and terms in

PREFACE

various Code sections are now contained under the main heading DEFINITIONS, rather than under WORDS AND PHRASES.

We are continuing efforts to review and expand the index so that each succeeding reissue not only will bring the index to date but will prove more useful to the subscriber than previous issues. We invite and solicit *specific* suggestions for improvement of this index. A business-reply postcard is enclosed so that users can advise us of particular areas in which the index is deficient or can be made more useful. With the help of all kinds of users—lawyers, judges, public officials, laymen—we can continue to make this index a better guide to the contents of the Century Code.

THE PUBLISHERS

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*See Pocket Supplement

4. Preparation of a New Ordinance

Each ordinance passed by the Tribal Government should have a unique number even if it is amending or repealing a previous ordinance. Enacted code provisions will, under the new system, be given a codification number. In drafting legislation, the tribal government should consider where in the code the particular provision will fit. If it fits within an existing chapter, it should be given a code number consistent with the numbers in that chapter. Code topics that are completely original should begin a new chapter. Ordinances should be drafted to look as it would in final form.

The number for code provisions should begin with the first substantive provision, not with the introduction or preamble to the provision which may merely state the general law-making powers of the legislature or the reasons for passing the particular provision. Thus, a draft of a code provision being considered for passage by the tribal government would have two numbers. The first one (printed at the top of each page) would be consistent with the currently used ordinance numbering system, i.e. 82-20. A second number, consistent with the codified code would be used to actually number the substantive text of the code provision. For instance, a new piece of legislation passed in 1982 which deals with tribal police might be numbered like this:

ORDINANCE # 82-30
Date November 15, 1982

Be it ordained by the Legislature of the
Menominee Indian Tribe of Wisconsin:

Whereas: _____

Whereas: _____

Chapter 11 Tribal Police

Section 8 Police may not use deadly force when
apprehending offenders who have merely
committed misdemeanors or crimes against
property.

Section 9 Police may not participate in high speed
chases under any circumstances.

Proposed ordinances should be typed on 8 1/2" x 11" paper so if approved, they can be copied onto three-hole letter size paper and distributed to offices or persons with a binder for insertion into the binder until updates are prepared and distributed. Copies of ordinances should be sent out on colored paper to make them more visible for removal when updates/revisions are distributed. Always make them the same color so they can be identified merely by color and distinguished from emergency ordinances.

When approved ordinances are distributed, a record should be created to document that they have been distributed. See Exhibit 3 for a copy of a form that could be used for this purpose.

5. Storage and Indexes for Enacted Ordinances

Under a codified code system an enacted ordinance will be included in a binder according to its codification number. However, the tribe should also maintain the original copy of all ordinances in sequential order in a folder or separate binder.

An annual index of all ordinances enacted should continue to be maintained for each year. Cross reference information regarding ordinances repealed or amended could be recorded on the index. However, an ordinance repealing or amending a previous ordinance should not be stored with the original copy of the previous ordinance.

6. Operational or Emergency Ordinances

Certain ordinances should not be included in a code binder. These ordinances include such items as the following:

- Leases
- Attorney Contract Authorizations
- Authority to Incur Indebtedness
- Annual budget approvals
- Emergency ordinances

Copies of these ordinances should be kept in separate folders with a table of contents.

Copies of certain ordinances will have to be provided to offices or persons affected by the ordinance.

ORDINANCE DISTRIBUTION RECORD

Ordinance Number	Title	Date Dist.	No. of Copies By
---------------------	-------	---------------	---------------------

[illegible]

Emergency ordinances pose a unique situation. These ordinances would normally be included in the codified binder. However, since they are only temporary, steps need to be taken to assure that everyone is aware of when they expire. Emergency ordinances should always be distributed immediately on a form that has the words "EMERGENCY ORDINANCE" in large, bold letters at the top. Beneath "EMERGENCY ORDINANCE" the effective dates of the ordinance should be printed. For example, an emergency ordinance passed January 1, 1983 (and effective from date of passage) would expire on March 1, 1983. Thus, print on the form "Effective Date _____ Through Expiration Date _____."

Print copies of emergency ordinances for distribution on colored paper different than regular ordinances. Always make them the same color so that they can be identified as an emergency ordinance merely by color. Emergency ordinances should be removed from the code binder on expiration.

7. Code Revisions and Updates

Although offices and individuals with a code binder will be receiving copies of ordinances as they are enacted, there will be a need to periodically retype code pages to incorporate changes. Ideally this should be done as soon as possible after the ordinance is passed or at a minimum of every three (3) months (except for emergency ordinances).

The responsibility for preparing needed code revisions should be assigned to a specific person. That person would receive a copy of all ordinances that will have to be included in the binder. He/she would, each quarter, retype appropriate binder pages, update chapter indexes, and distribute the revisions to all offices or individuals with a binder. If codes and revisions were prepared on word processing equipment there would be a substantial saving in typing associated with future revisions.

Each set of updates should be accompanied with a set of instructions that lists which pages should be removed from the binder, and which pages should be inserted. Each recipient of these updates should also be instructed to keep the instruction sheet (with notations that the revisions have been inserted in the binder) in the code binder (behind the last tab in the binder). The individual distributing the revisions should also maintain a record of when and how many updates were distributed. See Exhibit 6 for sample form for this purpose.

BINDER REVISIONS AND AUDIT DISTRIBUTION RECORD

Revision*
or Annual
Audit Number Date
Distributed Number of
Copies By

* Insert copy of instructions and revisions or annual audit after this page (revisions may be discarded after annual audit.) Each annual audit kept until the next annual audit.

The integrity of a proposed codified code system is dependent upon everyone properly maintaining their code binder. If the tribe wishes to assure and monitor this process, it will be necessary to maintain records that all binders have been updated. To accomplish this objective, it is suggested that each update packet also include a form to be returned to the tribe indicating that the revisions have been inserted in the binder. The person assigned to making the revisions would have to then record for each assigned binder a record of these updates. See Exhibit 7 for a sample form that could be used for this purpose.

The above-noted procedures would also have to be followed for the extra binders in the tribal offices.

8. Annotations to Code Provisions

The code should contain notations indicating the date and ordinance number associated with each code section. However, the tribe may at a future date want to expand these annotations to include cross-references to other related sections or judicial decisions interpreting a specific code provision. See Exhibit 8 for an illustration of how these annotations could be included in the code.

9. Annual Audit

Even though the above-noted procedures for revisions should assure that all binders are properly maintained, there will continue to be occasions where binders have not been properly updated. As a backup system or procedure, it is recommended the tribe prepare and distribute annually a list of all page numbers in the binder and the last revision date for that page. The recipient of this checklist can (by comparing the list with the pages in his/her binder) determine if the binder has been properly maintained. The tribe should be notified when this comparison has been completed and that information would be recorded on the form illustrated in Exhibit 7.

40-01-09. Official newspaper of municipality.—The official newspaper as chosen by the electors of the county shall be the official newspaper of the municipality in which it is published, and such official notices and legal publications as the municipality is required to publish by law shall be published therein. In municipalities where the official newspaper is not published, the governing body of the municipality, annually by resolution at its first meeting in May, or as soon thereafter as practicable, shall designate a newspaper published in the municipality, if there is one, as the official newspaper of the municipality, including park districts therein, for the publication of notices and legal publications, including legal notices and official statements of the school districts embracing the municipality.

Source: S. L. 1905, ch. 62, § 46; R. C. 1905, § 2677; S. L. 1907, ch. 45, § 43; 1911, ch. 77, § 43; C. L. 1912, §§ 3598, 3813; S. L. 1919, ch. 187, § 5; L. M. November 2, 1920, § 1, S. L. 1921, p. 256; 1925 Supp., § 3176a5; R. C. 1943, § 40-0109.

Cross-References.

Publication fees, see § 46-05-03.
Publications required to be made in official newspaper, see § 46-06-09.
Selection of official newspaper and qualifications, see ch. 46-06.

English-Language Newspaper.

In the absence of a statute to the contrary, the requirement of publication of legal notices in a newspaper means a newspaper published in the English language. *Reuter v. Dickinson Bldg. & Loan Assn.*, 63 ND 673, 249 NW 778.

Time of Designation.

The time direction contained in this statute is directory only, and designation of official city paper made in October, instead of May, is valid. *Kerlin v. City of Devils Lake*, 25 ND 207, 141 NW 756.

Collateral References.

Newspapers—1-1(6).
39 Am. Jur., Newspapers and Press Associations, §§ 6-20.
66 C. J. S. Newspapers, §§ 2-17.

General circulation, what constitutes a newspaper of, within a statute in relation to publication of notices, etc., 68 ALR 542.

English language, necessity that newspaper be published in, to satisfy requirements regarding publication of legal or official notice, 90 ALR 500.



7.

STATE/TRIBAL
COURT RELATIONS

North Central Regional Office

MODEL COURT DEVELOPMENT PROJECT

Full Faith and Credit for
Indian Court Judgments

FINAL REPORT

Project Staff

Project Manager..... James G. Farrar
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Administrative Assistant..... Priscilla Wilfahrt
Adminstrative Assistant..... Kimary Knutson



National Center for State Courts
Suite 2601
American National Bank Building
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St. Paul, Minnesota 55101

INTRODUCTION

For the past year, NAICJA and the National Center for State Courts (NCSC) have been working together to improve communications and relationships between tribal and state courts under a Model Court Development Project funded by the Department of Justice's Law Enforcement Assistance Administration. The goal of the demonstration project was to achieve state court enforcement of Indian court judgments through statewide meetings in eight pilot states. The selected states included Arizona, Nevada, New Mexico, Oregon, South Dakota, Washington and Wisconsin.

The National Center's role in this project was to:

- contact the supreme courts and state court administrative offices in each of the states regarding the project and their participation in the statewide meetings;
- consult with representatives of each state court system to identify proposed discussion items for each statewide meeting;
- develop an integrated meeting agenda consisting of topics proposed by the state and topics identified by NAICJA in consultation with the tribal courts in each state;
- plan, schedule, and conduct a one day statewide meeting in each of the states;
- serve as secretariat at each of the meetings to document in a written report the specific problems and reasons affecting the enforcement of Indian court judgments in state courts;
- serve as a consultant to NAICJA in determining the need for technical assistance for tribal courts in the selected states.

The National Center has completed each of these tasks.

The following report outlines the various approaches and problems relating to state court enforcement of Indian court judgments, documents the results of each statewide meeting, and summarizes the Center's general findings and recommendations. The report contains an executive summary, eight individual state reports, and a general discussion of state court enforcement of Indian court judgments.

Executive Summary

This section of the report generally summarizes the concerns of state court judges, the types of problems tribal courts are having with enforcement of their orders and judgments, the types of offers made by the state to improve relationships, and what general approaches or technical assistance would be most helpful to tribal court in achieving state court enforcement of their judgments.

The final section of this summary discusses proposed federal legislation that would authorize tribal-state compacts regarding enforcement of Indian court judgments, and appropriate additional federal magistrates to hear federal misdemeanor violations by non-Indians on reservations.

State Reports

The results of the statewide meetings are documented in separate reports for each state (see, Tab A). Each state report describes the status of state and Indian court jurisdiction and enforcement of judgments, impediments to reciprocal enforcement

of judgments, and proposed approaches to improving relationships between the two court systems. Areas of needed technical assistance identified at the state meetings are also noted in each report. Finally, each state report has an appendix section containing tribal profiles, directory of tribal officials, directory of BIA and Department of the Interior offices, a description of the state court system, and copies of any major caselaw relating to that state.

Background Research Materials

The attachment to this report (see, Tab B) is a research document prepared by the Center which discusses the general status, concerns, and alternative approaches to state court enforcement of Indian court judgments. This material was distributed to participants at each of the statewide meetings along with additional research and information relating to the pilot state. The state related material has been removed from the attachment and included in the individual reports for each state.

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ALTERNATIVES FOR ACHIEVING RECIPROCITY

It is well established that Indian tribes have a status separate from the state in which they are located. For this reason, it would seem to follow that some type of judgment recognition and enforcement reciprocity would be in effect between state and tribal courts. Yet this is generally not the case. In the absence of such mutuality, injustices are common for both Indians and non-Indians.

Tribal members often cannot enforce contract rights or other civil remedies which involve parties off the reservation. In many states, tribal members are unable to commence a civil suit arising out of accidents caused on reservations by drivers who are non-members of the tribe. Once across the reservation boundary line, the driver is not subject to the tribal court's jurisdiction. This leaves the injured party without redress in the tribal forum because actions brought against non-members have no effect outside the reservation boundary unless tribal judgments are recognized by the state. Similarly, state court proceedings against Indians who reside on the reservation are not enforceable on the reservation absent reciprocity between the two jurisdictions, or unilateral recognition by the tribal court.*

Limitations on criminal justice are likewise evident where mutual extradition agreements are lacking. State officials often perceive reservations as a "refuge" for individuals fleeing from state and federal law enforcement officers. At the same time, tribal officials cite numerous examples of non-member violators who simply cross reservation boundaries to escape from tribal authority. Obviously, lack of cooperation between state and tribal courts encourages violators on both sides.*

The question of how to achieve reciprocity between state and tribal courts remains. There are several alternatives. They include full faith and credit, congressional mandate, state legislation, tribal/state court agreements and comity. These alternatives are outlined below.

Full Faith and Credit

The concept of "full faith and credit", as embodied in Article IV of the U.S. Constitution, protects the legal rights of American citizens. The concept requires states to mutually recognize and enforce the official court orders and judgments of sister state courts of record. This mandate was extended to "territories" by federal statute (28 U.S.C.A. 1738). In 1975, the New Mexico Supreme Court ruled that the laws of Indian tribes are entitled by this statute to "full faith and credit" in the courts of New Mexico because Indian tribes are "territories" within the meaning of that statute, with the qualification that a forum state need not subordinate its own statutory policy to a conflicting public act of another state or territory (CIT Corp. v. Jim, 533 P.2d 751, 87 N.M. 362 (1975)). No other state has interpreted "territories" as applying to Indian country. In fact, some states openly dispute the full faith and credit intent of these laws in relation to Indian courts. Various interpretations exist, state by state, on the degree to which state courts must honor Indian court judgments.

Congressional Mandate

The recent Indian Child Welfare Act (P.L. 95-608, 92 Stat. 3069, 25 U.S.C. 1901 et seq.) requires state

courts to honor Indian court judgments through granting them full faith and credit, when these judgments relate to Indian child custody cases. This is the only area in which Congress has specifically mandated state courts to enforce Indian court judgments.

State Legislation

Few states believe that there is any constitutional or congressional mandate (except under the Indian Child Welfare Act) to give "full faith and credit" to Indian court judgments or orders. Additionally, some states believe that state courts have no authority to enforce Indian court judgments without authorizing state legislation. The state of Washington is one of these states. However, in that state, the Legislature has authorized enforcement of tribal judgments in civil actions in the discretion of the state court, if not inconsistent with state policy. The state of Wisconsin is presently considering legislation that not only would authorize state court enforcement of tribal court judgments, but would also make such enforcement mandatory. Wisconsin is also considering legislation that would authorize the governor to negotiate a reciprocal extradition agreement with the Menominee tribe.

State-Tribal Court Agreements

Even without federal or state legislation, some tribes have entered into written agreements with state courts to mutually enforce each other's orders and judgments. These agreements formally spell out expectations and requirements between state and tribal courts for mutual recognition of each other's orders and judgments. At present there are few state-tribal agreements in existence to govern reciprocity, but tribes are looking toward formulating such agreements with more frequency. These agreements would avoid the often slow and cumbersome legislative process.

Comity

In many states, individual state courts have informally enforced Indian court judgments under their "inherent power" to enforce judgments from another jurisdiction. This practice is called "comity" and is exercised on a case-by-case basis, at the discretion of the court. This practice generally occurs where state and Indian courts are geographically close and have developed, over a period of time, good communication and working relationships. Tribal court marriages and divorce orders, in particular, have often been recognized and enforced through comity.

*Portions of these paragraphs are excerpted from *Issues in Mutuality* prepared by the American Indian Lawyer Training Program, Inc., November 1976.

II. STATEWIDE MEETINGS

The primary approach used in this project to achieve improved tribal and state court relationships was statewide meetings between representatives from the two court systems. Meetings were held in 1981 in the following seven pilot states.

<u>DATE</u>	<u>STATE</u>	<u>LOCATION</u>
June 19	New Mexico	Albuquerque
July 14	South Dakota	Pierre
July 20	Montana	Billings
August 7	Arizona	Phoenix
August 21	Oregon	Portland
September 28	Nevada	Reno
October 1	Washington	Toppenish

An eighth statewide meeting was planned and scheduled for Wisconsin. The meeting was subsequently cancelled at the request of the tribal court (and, approval of NAICJA) because of the positive relationship already developed between tribal and state courts resulting from meetings previously held between project staff, state court officials, state attorney generals office, and tribal representatives regarding this project and pending legislation (granting full faith and credit to Indian court judgments).

- 4 -

The statewide meetings were conducted by the National Center for State Courts and attended by 154 tribal and state representatives. See, Chart 1 for a list of types and number of attendees in each state. Individual attendee lists are included in each of the state reports.

Each state meeting was similarly conducted. The NAICJA representative introduced him or herself and each attendee was then asked to introduce themselves. The NAICJA representative then outlined the project's objective and the reason for the meeting. The Center staff representative then briefly reviewed the materials in the resource binder for each state. After this review, participants were encouraged to describe existing cooperative relationships existing between state and Indian courts. Participants were then given an opportunity to discuss problem areas between the two court systems. In all state meetings, state and tribal court representatives interrupted the formal agenda with suggestions for improving future relationships.

III. FINDINGS AND RECOMMENDATIONS

Some Indian and state court representatives at each meeting appeared to hold outdated views of the other based upon old impressions and inaccurate stereotypes. Fortunately, most participants openly discussed concerns, problems, factors affecting their preceptions and willingness to enforce each other's orders and judgments. This process gave both sides an

opportunity to meet each other (usually for the first time), and respond to each sides concerns. Both sides generally left the meeting with an increased sensitivity to the problem, an awareness of the other's concerns, and a willingness to continue working toward improved relationships.

A. State Court Concerns

The most serious concern of state court judges was that defendants in tribal courts were not being provided due process protections required in state court systems. State judges did not assume that tribal judges were knowingly denying defendants these basic rights. Their fear was that because tribal judges were generally not lawyers and had little judicial training, such denials were done unknowingly. Many state judges also feared the control and influence tribal councils have over Indian courts. When these concerns are added to a preception that tribal court records are not adequate to document compliance with traditional due process safeguards, state judges are reluctant to enforce Indian court judgments.

There were a number of additional factors identified at the meetings which affect state court's relationships with tribal courts including uncertainty regarding jurisdiction, a lack of appellate review of tribal court decisions, who receives the fines from traffic violations on state highways crossing reservations, and tribal court's lack of authority to enforce there own civil judgments. A general list of concerns from each state is recorded below on Chart 2.

STATE COURT CONCERNS
Regarding Enforcement of Indian Court Judgments

	ARIZONA	MONTANA	NEVADA	NEW MEXICO	OREGON	SOUTH DAKOTA	WASHINGTON	WISCONSIN	TOTAL
• Lack of Due Process	X	X	X	X	X	X		X	6
• Inadequate Records	X		X	X	X	X			5
• Judicial Training		X			X	X		X	4
• Judicial Independence		X	X		X	X			4
• No authority for State Courts to enforce Indian Court Judgments		X			X	X		X	4
• Lack of appropriate sentencing alternatives for Indian defendants in State Courts	X			X					2
• Jurisdiction unclear							X	X	2
• Who gets revenue from traffic fines							X		1
• Indian Judgments are <u>not</u> submitted to state courts for enforcement		X							1
• Indian courts have no authority to enforce their own judgments						X			1
• Indian court judgment do not have procedures to review decision on appeal						X			1

Even if all of the articulated concerns were resolved, four of the project states believed they have no authority to enforce Indian court judgments. This position has been articulated in various state attorney general opinions (e.g., South Dakota and Wisconsin). In such states, the problem will likely not be resolved without state legislation authorizing such enforcement. In the states where statewide meetings were held, this is now more likely to occur. As a result of the meetings, some state judges learned that many tribal courts did have judicial independence, were well trained, provided basic due process protections, and maintained proper court records. As will be noted later, a number of these judges even offered to support and draft needed legislation or court rules.

B. Tribal Court Problems

Although a few of the tribal court judges acknowledge that the concerns of state judges (i.e., poor records, judicial independence, and lack of post judgment remedies or appellate review) were a problem in their courts, most Indian judges felt that state judges generally lacked an accurate understanding of Indian court operations, records maintenance practices, and due process safeguards. Most of the Indian courts believe that state courts have no valid basis for refusing to enforce Indian court judgments.

A number of the tribal courts indicated that in the past they had enforced state court judgments in their courts. However, because of state court's lack of reciprocity, their tribal councils had passed code revisions taking away the tribal court's authority to enforce state judgments. In these jurisdictions, some of the tribal judges were not certain tribal councils would authorize the court to enforce state court judgments even if the state agreed to enforce Indian court judgments. Some tribal councils apparently are concerned that Indian courts will become collection agencies for the state. Nevertheless, most tribal court judges are interested in achieving reciprocal enforcement of orders and judgments. However, they do not feel they should have to lose their Indian identity.

Some of the most serious problems tribal courts have are not with the state courts. Many of their problems are with state police agencies, county presecutors, and other tribal courts. State police will not work with tribal police, county prosecutors refuse to prosecute criminal offenses against non-Indians, and tribal courts frequently will not enforce each others court orders and judgments. These problems will have to be addressed and resolved before Indian courts are able to adequately administer justice on their reservations.

Chart 3 below records the problems identified by Indian court judges in each of the state meetings.

TRIBAL COURT PROBLEMS

Chart 3

	ARIZONA	MONTANA	NEVADA	NEW MEXICO	OREGON	SOUTH DAKOTA	WASHINGTON	WISCONSIN	TOTAL
• State court judges lack accurate knowledge of tribal courts and judges		X	X	X	X	X	X		6
• Tribal council central over-court			X			X			2
• Tribal Courts do not want to be a copy of Anglo courts			X		X				2
• No FFC between tribal courts		X				X			2
• Police/county prosecutors refuse to enforce Indian court warrants		X							1
• Tribal codes do not allow tribal courts to enforce state judgments.		X				X			2
• Court jurisdiction too limited			X						1
• Inadequate records			X						1
• Tribal council is not supportive of court			X						1
• FFC with state courts would result in Indian courts becoming a collection agent								X	1
• State courts require a second filing fee when judgments submitted to state court for enforcement								X	1
• State does not have confidence in tribal police			X						1

C. Proposed Solutions

The greatest indicators of success of the Model Court Development Project came from the state justices and judges attending the state meetings. In all of the state meetings, there was an offer by the state to include Indian judges in annual state judicial conferences or training programs. In five (5) of the states there were offers to include Indian judges in state or local judicial committees. In three (3) of state meetings, state judges even agreed to help write legislation or court rules providing for state court enforcement of Indian court judgments. One state even offered to provide technical assistance to tribal courts. See, Chart 4 below for a listing of these offers by state.

D. Needed Technical Assistance -

Each of the state reports (see, Tab A) lists specific technical assistance that should be provided to Indian courts in that state. These recommendations vary by state because of their unique situations. However, there are a number of areas where technical assistance would generally benefit the Indian courts in each of the states. These include the following areas:

- All "offers" by state court representatives should be followed-up on and monitored.
- Updated tribal court profiles should be prepared and made available to the state supreme court.
- Proposed legislation should be drafted for each state to provide for state court enforcement of Indian court judgments (in some states all that might be required is an amendment to the state's Uniform Enforcement of Foreign Judgments Act).

Offers By State Courts To Improve
Enforcement of Indian Court Judgments

Chart 4

	ARIZONA	MONTANA	NEVADA	NEW MEXICO	OREGON	SOUTH DAKOTA	WASHINGTON	WISCONSIN*	TOTAL
• Attendance of Indian judges at state judicial conferences		X	X		X	X	X		5
• Indian judges participation in state/local committees	X	X		X		X	X		5
• participation in state judicial training programs	X			X					2
• assistance in amending state statutes or court rules to provide for enforcement of Indian court judgments	X	X			X				3
• Provide technical assistance to tribal courts						X			1

* No statewide meeting held

- A program should be developed to certify tribal courts meeting the requirements of a state's Uniform Enforcement of Foreign Judgments Act (or any other requirements of the State).
- Tribal courts should be encouraged and assisted in arranging local state/tribal court meetings.
- A standard Records Management Manual should be developed for Indian Courts.
- Indian court judges should be provided guidelines and training in the areas of "full faith and credit" and records management.

Assistance in these areas will substantially improve the likelihood of state court enforcement of Indian court judgments.

IV. FEDERAL LEGISLATION

Some states hold that state courts have no inherent authority to enforce tribal court judgments or transfer jurisdiction in individual cases to tribal courts. Others believe that the federal government has the responsibility to establish and fund a judicial forum for hearing criminal and civil matters on reservations. The following proposed bills address these issues and should be considered as additional alternatives or approaches.

H. Tribal State Compact Act (S.563 1981)

This bill is intended to serve as a federal enabling statute authorizing Indian tribes and states and their political subdivisions to enter into compacts and agreements

between themselves on matters relating to: (1) the enforcement or application of civil, criminal and regulatory laws of each within their respective jurisdictions; (2) allocation or determination of governmental responsibility over specified subject matters of specified geographical areas, or both; and (3) agreements or compacts which provide for transfer of jurisdiction in individual cases from tribal courts to state courts or state courts to tribal courts in accordance with procedures established by the laws of the tribes and the states.

States and tribes already have authority to enter into agreements on many issues. However, provisions in federal law appear to limit this authority in certain areas touching upon jurisdiction. The purpose of this bill is to eliminate these restrictions.

Hearings were held on this bill before the Senate Select Committee on Indian Affairs on May 11, 1981. A document entitled Mutual Agreements and Compacts Respecting Jurisdiction and Governmental Operations was published as a result of these hearings. As of October 21, 1981, the bill is still before the Senate Select Committee on Indian Affairs. See, following copy of S.563

CHAPTER 369 , LAWS OF 1981

AN ACT to create 806.245 of the statutes, relating to extending full faith and credit to the acts and court documents of the Menominee Indian tribe.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 806.245 of the statutes is created to read:

806.245 Indian tribal documents: full faith and credit. (1) Subject to subs. (2), (3) and (4), copies of judicial acts, records, proceedings and valid judgments of the Menominee Indian tribe of Wisconsin and acts of the Menominee Indian tribal legislature shall have the same full faith and credit in the courts of this state as do the acts, records, judicial proceedings and judgments of any other governmental entity, if the court of the Indian tribe grants full faith and credit to the judicial acts, records, proceedings and valid judgments of the courts of this state and to the acts of other governmental entities in this state.

(2) To qualify for admission as evidence in the courts of this state:

(a) Copies of acts of a tribal legislature shall be authenticated by the certificate of the tribal chairperson and tribal secretary.

(b) Copies of records, judicial proceedings and judgments of a tribal court of record shall be authenticated by the attestation of the clerk of the court. The seal, if any, of the court shall be affixed to the attestation, together with a certification by a judge of the court that the clerk's attestation is in proper form.

(3) In determining whether a tribal court is a court of record, the circuit court shall determine that:

(a) The court keeps a permanent record of its proceedings.

(b) Either a transcript or an electronic recording of the proceedings is available.

(c) Final judgments of the court are reviewable by a superior court.

(d) The court has authority to enforce its own orders through contempt proceedings.

(4) In determining whether a tribal court judgment is a valid judgment, the circuit court shall examine the tribal court record to assure that:

(a) The tribal court had jurisdiction of the subject matter and over the person named in the judgment.

(b) The judgment is final under the laws of the rendering court.

(c) The judgment is on the merits.

(d) The judgment was procured without fraud, duress or coercion.

(e) The judgment was procured in compliance with procedures required by the rendering court.

(f) The proceedings of the tribal court comply with the Indian civil rights act of 1968 under 25 USC 1301 to 1341.

(5) No lien or attachment based on a tribal court judgment may be filed, docketed or recorded in this state against the real or personal property of any person unless the judgment has been given full faith and credit by a circuit court under this section.

* Section 990.05, 1979 WISCONSIN STATUTES: Laws and acts; time of going into force. "Every law or act which does not expressly prescribe the time when it takes effect shall take effect on the day after its publication."

CHAPTER 368 , LAWS OF 1981

AN ACT to create 976.07 of the statutes, relating to permitting the state and Indian tribes to enter into extradition agreements.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 976.07 of the statutes is created to read:

976.07 Agreements on extradition; Indian tribes. (1) The attorney general may negotiate an agreement with any Indian tribe within the borders of this state exercising powers of self-government within the Indian country as defined in 18 USC 1151 to which this state has retroceded jurisdiction under 25 USC 1323, relating to the extradition of witnesses, fugitives and evidence found within the respective jurisdictions of this state and the tribe.

(2) An agreement negotiated under sub. (1) shall provide that a court of the sending jurisdiction, before issuing an order for the extradition of any person, shall:

(a) Notify the person named in the extradition warrant of the right to a hearing and to legal counsel.

(b) Hold a hearing to determine:

1. That the person named in the warrant is the person charged with the crime or is the witness demanded.

2. That there is probable cause to believe that the person named in a criminal extradition warrant was present in the demanding jurisdiction at the time of the alleged crime or that the person committed an act in any place with intent to commit a crime in the demanding jurisdiction.

(c) If the person contests the legality of his or her arrest, allow a reasonable time within which the person may apply for a writ of habeas corpus.

(3) The attorney general shall submit agreements negotiated under sub. (1) to the governor for approval. The governor shall have 30 days in which to review the agreement. If the governor takes no action within 30 days, the agreement becomes effective.

(4) The attorney general shall provide technical assistance and material support necessary to implement any agreement under this section.

(5) An agreement under this section may be revoked by the governor, after consulting with the attorney general, or by the tribal chairperson upon 6 months' written notice to the other party unless a different period of time is specified in the agreement.

(6) This section does not:

(a) Enlarge the criminal or civil jurisdiction of either the state or a tribal government under federal law.

(b) Permit an Indian tribe to enter into agreements other than those authorized by its organizational documents and laws.

(c) Permit this state or any of its political subdivisions to enter into agreements prohibited by the state constitution.

SECTION 2. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

A	B	C
Statute Sections	References Deleted	References Inserted
15.251 (intro.)	none	976.07

* Section 990.05, 1979 WISCONSIN STATUTES: Laws and acts; time of going into force. "Every law or act which does not expressly prescribe the time when it takes effect shall take effect on the day after its publication."

MENOMINEE NATION
MENOMINEE TRIBAL LEGISLATURE
ORDINANCE #81-22

EXTRADITION

(FINAL APPROVAL)

BE IT ORDAINED BY THE LEGISLATURE OF THE MENOMINEE INDIAN
TRIBE OF WISCONSIN:

WHEREAS, the Menominee Indian Tribe of Wisconsin is a
federally recognized Indian Tribe with all the attributes
of sovereignty over its lands and people; and

WHEREAS, the laws of the State of Wisconsin have no force
and effect on the Reservation or the Tribe; and

WHEREAS, Article III, Section 1, of the Menominee Constitution
provides that the Tribal Legislature shall be vested with all
executive and legislative powers of the Tribe including the
power to make laws and to negotiate with State Governments;
and

WHEREAS, it is the desire of the Tribe to provide a mechanism
whereby the State of Wisconsin and the Tribe can have re-
turned to the jurisdiction of each sovereign, persons who
have been charged with violation of its criminal laws and
who have fled; and

WHEREAS, an extradition agreement, unilateral or reciprocal,
is the mechanism under American jurisprudence and government
which provides for the return of those who flee to escape
prosecution; and

WHEREAS, the Tribe will not allow its lands to become a
haven for persons who wish to avoid the jurisdiction of the
State of Wisconsin and enforcement of its criminal laws;

NOW, THEREFORE, the Tribal Legislature directs the Tribal
Chairperson, Tribal Police, and Tribal Court to proceed
according to the steps outlined below in every matter of
extradition:

Section 1. Proceeding in Tribal Court.

- a) Any Indian person found within the exterior boundaries of the Menominee Indian Reservation for whom an arrest warrant has been issued by a District Court of the State of Wisconsin, based upon a charge which constitutes a felony under the laws of the State, or who has violated the terms of parole or probation under the laws of the State of Wisconsin shall be taken into custody by tribal law enforcement personnel upon order for the arrest of such person issued by a Tribal Court Judge.
- b) Said order for arrest shall be based upon the presentation to the Tribal Court, of a Wisconsin State Arrest Warrant and a written notice from the appropriate District Attorney that he is instituting formal extradition proceedings through the Office of the Governor of the State of Wisconsin. The Trial Court Judge shall then review the warrant to determine its apparent validity, based upon its date of issuance, the charge of a felony, violation of the terms of parole or probation, and the existence of the person named therein. If the Judge finds the warrant to be apparently valid, an arrest warrant shall be issued.
- c) Any Indian person taken into custody as provided in the preceding paragraph shall be taken by the arresting officer before the Menominee Tribal Court, Trial Division. The Trial Judge shall promptly hold a hearing to determine only whether said person is the same person charged on the face of the warrant. If the Trial Court Judge shall find that the person in custody is the same person named in the State warrant, the Judge shall issue an appropriate order to that effect and shall order the Tribal Police to hold said person.
- d) The person in custody may inform the Trial Court at the time of the hearing provided for in the preceding paragraph that extradition is waived, and shall execute in the presence of the Tribal Judge a Waiver of Extradition. Upon receipt of

said Waiver, the Judge shall order the tribal law enforcement personnel to promptly turn over said person to the appropriate State official.

Section 2. Extradition.

- a) The Governor of the State of Wisconsin shall present a written request to the Tribal Chairperson for the extradition of any Indian person found within the boundaries of the Menominee Indian Reservation who is charged with an offense which is a felony under the laws of the State of Wisconsin. The Governor's written request shall be accompanied by the following documents:
 1. An application for extradition by the appropriate District Attorney;
 2. An affidavit of complaining witness;
 3. A certified copy of the filed Complaint and the issued arrest warrant.
- b) Upon receipt of said written request, the Tribal Chairperson shall first determine the presence on the Reservation of the requested person. If said person is present and in the custody of the tribal police pursuant to Section 1, above, the Tribal Chairperson shall order the tribal law enforcement personnel to turn said person over to the appropriate State official through the issuance of an appropriate written order. If said person is not in the custody of the tribal police, the Tribal Chairperson shall request the Menominee Trial Court to review the extradition documents in a hearing conducted pursuant to Section 1 (b) above.
- c) All expenses incurred by the Menominee Indian Tribe, including court costs and incarceration expenses, shall be reimbursed by the County in which the District Attorney requesting extradition operates. If a person is taken into custody pursuant to Section 1 (a) and the Governor shall decline to request extradition, the attendant costs shall also be reimbursed by the appropriate County.

Section 3. Legal Effect: Supersession.

This ordinance expressly supersedes and nullifies any and all ordinances and CFR provisions pertaining to extradition heretofore enacted or adopted by the Tribal Legislature.

Section 4.

This ordinance shall become effective upon the passage of final State legislation regarding full faith and credit and extradition and reciprocal agreement with the State of Wisconsin.

CERTIFICATION

The undersigned Chairperson and Secretary do hereby certify that the foregoing Ordinance #81-22, was adopted at a Regular Meeting of the Menominee Tribal Legislature held on September 17, 1981, at which a quorum was present, by a vote of 8 in favor; 0 opposed; 0 abstentions; 1 absent.

Lucille B. Chapman
Lucille B. Chapman, Chairperson
MENOMINEE INDIAN TRIBE OF WISCONSIN

Christine Webster
Christine Webster, Secretary
MENOMINEE INDIAN TRIBE OF WISCONSIN

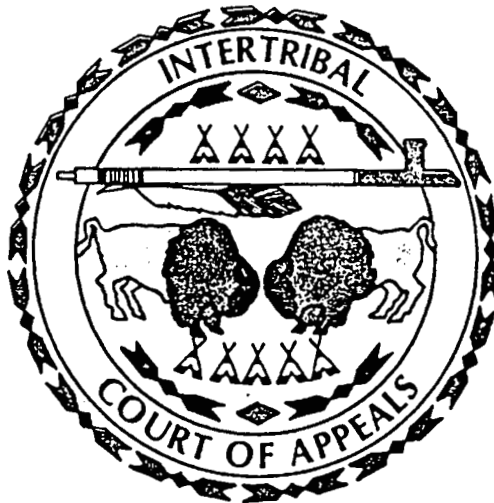
DATE: 9/18/81

8.

8.

INTERTRIBAL
COURT OF APPEALS

INTERTRIBAL COURT OF APPEALS



MEMBERS:

*Crow Creek Sioux Tribe
Ft. Thompson, S.D. 57339
(605-245-2221)*

*Lower Brule Sioux Tribe
Lower Brule, S.D. 57548
(605-473-5561)*

*Rosebud Sioux Tribe
Rosebud, S.D. 57570
(605-747-2381)*

*Sisseton-Wahpeton Sioux Tribe
Sisseton, S.D. 57262
(605-698-3911)*

*Cheyenne River Sioux Tribe
Eagle Butte, S.D. 57625
(605-964-2996)*

Administrative Office:
Box 617
Ft. Thompson, S.D. 57339
(605-245-2400)

INTERTRIBAL COURT OF APPEALS

The Intertribal Court of Appeals is a multi-tribal appellate system that began in October 1980 with a grant from the Law Enforcement Assistance Administration. This was preceded by the recognition of three Sioux Tribes that their present systems for hearing appeals from tribal court needed improvements. Representatives from these three tribes (Crow Creek Sioux Tribe; Lower Brule Sioux Tribe; Rosebud Sioux Tribe) resolved to study the feasibility of cooperating together to form an appellate system that would be fair, efficient and economical as well as professional in all aspects.

To this end they coordinated their efforts with the Division of Law Enforcement Assistance of South Dakota. While first seeking funds through the LEAA block grants to states, they discovered that discretionary monies were available directly from LEAA. Parallel with the effort to obtain funding for the project, tribal representatives also consulted their respective tribal attorneys to enlist their aid in devising a uniform appellate code that would govern the processing of appeals from multi-jurisdictions. The attorneys and other involved persons met over a period of several months to formulate the basic code, bringing together the best in their opinion that they had seen in other model codes for appellate systems. Subsequently a primary rough code was hammered out and submitted for review by all parties.

In December of 1980 the Appellate Court Policy Board hired a full time court administrator. He proceeded to establish a central administrative office on the Crow Creek Reservation and further refined the appellate code through researching state and Federal appellate codes. The final draft was reviewed by all tribal attorneys and then circulated for tribal approval by Council Resolution. All three tribes adopted the Uniform Code, and there are at present four members (the fourth being the Sisseton-Wahpeton Sioux Tribe).

The function of the Intertribal Court of Appeals may be divided into two basic aspects: 1) administration, and 2) operations. We will offer a brief summary of each.

Administration

One of the most vital assets of any organization, especially a court system, is fairness through uniformity in handling the business of the organization. As mentioned above, a central administrative office was required to help assure uniformity of processing. Consequently all appeals must be filed through one office using procedures that are standardized both by the Code and Court Rule. All litigants know in advance what deadlines are applicable, the bond required, and how to go about filing an appeal. The court administrator and the appellate clerk handle the processing of all incoming appeals, including the filing of all motions, exhibits, affidavits, briefs and other legal papers. Items requiring the action of the Court are forwarded to the Chief Appellate Judge.

Central administration also requires that all budget and office management matters

be handled by the court administrator and clerk. A detailed record is kept of all expenses, bonds received and returned, items kept in trust for judgment and all costs associated with the processing of each appeal. The court staff can then project future expenditures and needs with some degree of accuracy in assuring smooth and continuous operations. A model filing and recordkeeping system (Am. Univ.) was instituted early in the project using a color coded alpha-numeric format. All cases are cross indexed by plaintiff-defendant with a "one-write" system that utilizes three-by-five cards and carbon paper (less expensive than NCR paper). The original is used as a register of actions within a loose-leaf binder separated into civil and criminal appeals.

The Chief Appellate Judge oversees the general operation of the appeals court system and administrative and procedural matters pertaining thereto. The position of chief appellate judge is appointed on an annual basis in accordance with the court's fiscal year (same as the Federal fiscal year), and rotates among member tribes in the order in which the tribe adopted the Uniform Code. Each tribe therefore obtains representation in this position. Each other member tribe appoints at least one regular appellate judge and one or more alternates in case of disqualification or illness. A panel of judges is used for each case heard and a written opinion issued. In the event that no judge on the panel is a law-trained attorney, the court hires an attorney to temporarily sit on the panel for that particular case or cases. The administrative office located and identified attorneys willing to participate in this fashion through the cooperation and assistance of the State Bar, Indian Law Section.

Mentioned earlier, an Appellate Court Policy Board was created to oversee the appellate court system. Comprised of two representatives from each member tribe, the Policy Board has review and approval authority on all annual budget and operational matters of the appellate court system except as may be otherwise provided in the Code. They approve all personnel policies and procedures and generally insure compliance with set policies. This broad representation assures that each member tribe has an equal and significant voice in the direction of the court.

Operations

The Intertribal Court of Appeals accepts both criminal and civil appeals from member tribal governments/courts. The concept of using a shared intertribal appellate court system was an outgrowth of several interrelated factors, including: 1) a mutual desire to maximize and enhance the efficiency of handling appeals from the tribal court, along with the quality of justice rendered on appeal, 2) the spiraling costs of maintaining separate tribal mechanisms to hear appeals, 3) an increasing judicial workload and the growing legal complexity of issues presented to the courts and 4) the mandate to improve compliance with provisions contained within the Indian Civil Rights Act and Indian Child Welfare Act. These and other factors generated a collateral interest in a shared court of appeals that encourages the future participation of all interested tribes (not limited to Sioux Tribes).

This wide participation is made possible through several vital aspects of court operation, the most important of which may be the factor that the Intertribal

Court of Appeals is a court of record in which de novo trials do not take place; i.e., there is no calling of witnesses, hearing new testimony or any of the other attending actions associated with a trial. Decisions of the court are based on the record in the tribal court and oral argument, if requested. This strongly encourages tribal courts to become courts of record themselves or to improve their present capabilities.

Another problem frequently associated with appellate court systems is the time and cost necessary to produce transcripts of hearings. On reservations this is a special problem since many of those people wishing to make an appeal are economically poor. It is well known, for instance, that a court reporter may charge two dollars or more per page of transcribed hearing matter and the cost speedily multiplies if the hearing or trial was lengthy. The court solved this problem by encouraging the designated record be the tape recording itself. An average cassette tape cost of two or three dollars is much more affordable than transcription, and appellate judges receive a copy of the tape instead of the transcribed record. When the case is closed the tapes are returned to the administrative office and erased for future use, with the original being returned to the tribal court. The duplication process is handled by a high-speed cassette duplicator that reproduces a tape within about 2-3 minutes.

When a case nears completion, or readiness for oral argument, a Session of Court is scheduled by the Chief Appellate Judge and the administrative staff. Normally there are four sessions per year. When a case file is ready the clerk produces a complete file for each appellate judge on the panel for that particular session. A period of from one to two months is allowed for the judges to study the complete file, including the designated record on appeal, all exhibits, evidence, motions, and of course the tape of the hearing or trial. When the Court is convened, oral argument lasts about one hour or so, giving each side the opportunity to fully explain their legal position including the opportunity for an exchange of questions and answers. At the conclusion of oral argument the Court panel meets privately to discuss the merits of the case and may at that time arrive at a tentative decision. If so, one judge is assigned (or volunteers) to author the Opinion of the Court which is later circulated among the judges for review and comment. When finalized, it is signed by each judge and issued by the Court. A 20-day period is given to parties to petition for a rehearing, after which the decision is final.

There are many other interesting aspects or facets to our court operation that space does not allow in this summary. One of the more intriguing, however, is that the Uniform Code does not change any tribe's substantive laws -- only the procedure for making an appeal. The Court panel, in making its decision, applies and interprets only the Tribal Code for that tribe from which the appeal has come. Other aspects of our court system, contained within the Code, include such things as jurisdiction, conflicts of interest, disqualification of judges, full faith and credit, court rule-making authority and many others. Please contact our office for information. *

Intertribal Court of Appeals
Box 617
Ft. Thompson, South Dakota 57339
(605-245-2400)

*Case status report attached.

INTERTRIBAL COURT OF APPEALS

STATUS REPORT OF
ALL CASES FILED

1. Earlwin Red Bird, et al (Plaintiff-Appellant) v. Dale Little Soldier, Moreau River Cooperative, J.D. Williams (Defendant-Respondent)
Case number: CV-001-81
Filed from: Cheyenne River Sioux Tribe
Description: This case involved a dispute concerning the awardance of a grazing permit..
Status/disposition: This appeal was withdrawn by the parties, case was settled out of court.
2. Darlene Miller (Plaintiff-Appellant) v. Clayton Adams (Defendant-Respondent)
Case number: CV-002-81
Filed from: Sisseton Wahpeton Sioux Tribe
Description: This case concerned the payment of an alleged Tribal debt with per capita money.
Status/disposition: A written appellate decision was issued in this case.
3. Dewey Neck (Plaintiff-Appellant) v. Violet Neck (Defendant-Respondent)
Case number: CV-003-81
Filed from: Rosebud Sioux Tribe
Description: This case involved a child custody dispute.
Status/disposition: A Per Curiam Decision was issued in this case.
4. Sterling Kills Plenty (Plaintiff-Respondent) v. Rosebud Grievance Board Committee (Defendant-Appellant)
Case number: CV-004-81
Filed from: Rosebud Sioux Tribe
Description: This appeal involved the employment termination of a Tribal employee.
Status/disposition: This appeal was dismissed with prejudice.
5. Rosebud Housing Authority (Plaintiff-Respondent) v. George Guerue (Defendant-Appellant)
Case number: CV-005-81
Filed from: Rosebud Sioux Tribe
Description: This case involved an eviction order.
Status/disposition: This appeal was dismissed without prejudice.

INTERTRIBAL COURT OF APPEALS,
STATUS REPORT OF ALL CASES FILED
PAGE TWO

6. Sisseton Wahpeton Sioux Tribe (Plaintiff-Respondent) v. Jewell St. John (Defendant-Appellant)
Case number: CR-001-81
Filed from: Sisseton Wahpeton Sioux Tribe
Description: This case involved the criminal convictions/sentences of six (6) alleged criminal violations.
Status/disposition: A written appellate decision was issued in this case.
7. Rosebud Sioux Tribe (Plaintiff-Respondent) v. Carmen White Hat (Defendant-Appellant)
Case number: CR-002-81
Filed from: Rosebud Sioux Tribe
Description: This appeal involves a Driving While Intoxicated criminal conviction.
Status/disposition: This appeal is scheduled to be heard at the Appellate Court's January 1983 session.
8. Rosebud Housing Authority (Plaintiff-Respondent) v. Yvonne Black Lance (Defendant-Appellant)
Case number: CV-001-82
Filed from: Rosebud Sioux Tribe
Description: This appeal involved an eviction order.
Status/disposition: A written appellate decision will be issued in the near future.
9. (Juvenile)
Case number: CV-002-82
Filed from: Crow Creek Sioux Tribe
Description: This appeal involves the custody of a minor child.
Status/disposition: This case was heard and a written appellate decision will be forthcoming.
10. Sisseton Wahpeton Housing Authority (Plaintiff-Respondent) v. Thomas Quinn (Defendant-Appellant)
Case number: CV-003-82
Filed from: Sisseton Wahpeton Sioux Tribe
Description: This case involved an eviction and money judgement.
Status/disposition: This case was dismissed without prejudice.

INTERTRIBAL COURT OF APPEALS,
STATUS REPORT OF ALL CASES FILED
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11. Rosebud Housing Authority (Plaintiff-Respondent) v. Ralph Moran (Defendant-Appellant)
Case number: CV-004-82
Filed from: Rosebud Sioux Tribe
Description: This appeal involved the possession of a dwelling.
Status/disposition: This case was dismissed and the judgement of the Tribal Court was upheld.
12. Robert Semans, et al (Plaintiffs-Appellants) v. Geraldine Brave, et al (Defendants-Respondents)
Case number: CV-005-82
Filed from: Rosebud Sioux Tribe
Description: This appeal involves a Consent Decree and an Order Vacating Consent Decree.
Status/disposition: This appeal is currently under review by the Chief Appellate Judge to determine further action.
13. Mary Mestes (Plaintiff-Appellant) v. Beverly Mestes (Defendant-Respondent)
Case number: CV-006-82
Filed from: Cheyenne River Sioux Tribe
Description: This case concerned a default judgement.
Status/disposition: This appeal was dismissed without prejudice.
14. Vivian Sampson (Plaintiff-Appellant) v. Sadie Mountford, et al (Defendant-Respondent)
Case number: CV-007-82
Filed from: Cheyenne River Sioux Tribe.
Description: This case involved a dispute over the awardance of a scattered site home.
Status/disposition: This appeal was dismissed without prejudice.
15. Antelope Community (Plaintiff-Respondent) v. Antelope Day Care Center (Defendant-Appellant)
Case number: CV-008-82
Filed from: Rosebud Sioux Tribe
Description: This appeal involves the possession of a building and property.
Status/disposition: This appeal is in the briefing schedule.

INTERTRIBAL COURT OF APPEALS,
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16. (Juvenile)

Case number: CV-009-82

Filed from: Rosebud Sioux Tribe

Description: This appeal concerns the transfer of a juvenile to be tried in adult criminal court.

Status/disposition: This appeal is in the briefing schedule.

17. Crow Creek Sioux Tribe (Plaintiff-Respondent) v. Roger Buum (Defendant-Appellant)

Case number: CV-010-82

Filed from: Crow Creek Sioux Tribe

Description: This appeal concerns a civil contempt of court judgement.

Status/disposition: This appeal is in the briefing schedule.

18. Crow Creek Sioux Tribe (Plaintiff-Respondent) v. Roger Buum (Defendant-Appellant)

Case number: CV-011-82

Filed from: Crow Creek Sioux Tribe

Description: This appeal concerns a default judgement.

Status/disposition: This case is in the briefing schedule.

19. Rank's Mobil (Plaintiff-Respondent) v. Wilamine Mann (Defendant-Appellant)

Case number: CV-012-82

Filed from: Crow Creek Sioux Tribe

Description: This appeal involves a money judgement order.

Status/disposition: This appeal is in the briefing schedule.

20. Louise Iyotte (Plaintiff-Respondent) v. Rose Brave (Defendant-Appellant)

Case number: CV-013-82

Filed from: Rosebud Sioux Tribe

Description: This case involves a small claims court judgement.

Status/disposition: The Tribal Court record on appeal should be filed in this case in the near future.

21. Rosebud Sioux Tribe (Plaintiff-Respondent) v. Clarence Roan Eagle (Defendant-Appellant)

Case number: CR-001-82

INTERTRIBAL COURT OF APPEALS,
STATUS REPORT OF ALL CASES FILED
PAGE FIVE

Filed from: Rosebud Sioux Tribe

Description: This case concerns a criminal conviction of Disobedience to Lawful Order of the Court.

Status/disposition: This case is in the briefing schedule.

22. Rosebud Sioux Tribe (Plaintiff-Respondent) v. Tony Arcoren (Defendant-Appellant)

Case number: CR-002-82

Filed from: Rosebud Sioux Tribe

Description: This case concerns a criminal conviction of Malicious Mischief.

Status/disposition: This case is in the briefing schedule.

23. Rosebud Sioux Tribe (Plaintiff-Respondent) v. Ted Standing Cloud (Defendant-Appellant)

Case number: CR-003-82

Filed from: Rosebud Sioux Tribe

Description: This case concerns the criminal convictions of Possession Of Marijuana and Possession Of Unsealed Package Or Container Of Intoxicating Beverage In A Public Place.

Status/disposition: This case is in the briefing schedule.

24. Lower Brule Sioux Tribe (Plaintiff-Respondent) v. Nathan Middletent (Defendant-Appellant)

Case number: CR-004-82

Filed from: Lower Brule Sioux Tribe

Description: This appeal concerns the criminal conviction of Criminal Non-Support.

Status/disposition: The parties to this appeal are designating the record on appeal.

UNIFORM CODE
INTERTRIBEL COURT OF APPEALS OF SOUTH DAKOTA

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UNIFORM CODE
INTERTRIBAL COURT OF APPEALS OF SOUTH DAKOTA

SECTION I. CREATION OF COURT OF APPEALS

There is hereby created an Intertribal Court of Appeals. Such Court shall serve such Indian Tribal Governments who adopt this Code without any change by any other Tribal Government. When duly adopted by a lawful act of the Tribal Government of a respective Reservation, such adoption is to be construed as an express grant of jurisdiction by such Tribal Government and Tribal Court to this Intertribal Court of Appeals.

SECTION II. OATH OF OFFICE OF JUDGE OF THE COURT OF APPEALS

Each member of the Court of Appeals shall swear and affirm according to the following:

"I, (name of person taking oath) hereby swear that I will uphold the Constitution and By-laws of such Indian Tribal Governments as I am called upon to review in my capacity as an Appeals Court Judge, and the Constitution and laws of the United States of America and that I will interpret and apply said laws with equity and fairness."

Said oath shall be administered by the chairperson of any of the Indian Tribes which are served by said Court of Appeals within thirty (30) days of the date that said Judge has been approved and employed.

SECTION III. JUDICIAL QUALIFICATIONS

No person shall act in the Office of a Court of Appeals Judge unless he or she is a Judge in the Judicial branch of a member Tribal Government at the time the Notice of Appeal is filed or is designated to subsequently fill such a position.

SECTION IV. PROCEDURE FOR SELECTING JUDGES

The Court of Appeals shall be initially comprised of three (3) Judges and have available at least three (3) Alternate Judges. The Alternate Judges shall serve when the Chief Appellate Judge or other Appeals Judge is incapable or unable to serve. A Judge and at least one Alternate Judge shall be selected by each member Tribe's Tribal Council within thirty (30) days of the date this Resolution is enacted. It is intended that each member Reservation Tribal Government shall have one of its designated Judges serve on each hearing or decision of each case heard before the Court of Appeals, provided that such Judge is not otherwise disqualified from so serving. In the event that Reservation governments other than Crow Creek, Lower Brule, and Rosebud seek to become members of the area served by the Court of

Appeals, then the number of Judges shall be increased or decreased accordingly. If the Appeals Judge and all Alternate Judges from a particular Reservation are disqualified or are unable to serve then the Chief Judge shall designate a Judge from the remaining Reservations. It is intended that the panel hearing an appeal have at least one (1) lay Judge or one person who is a member of a member Tribe familiar with Indian customs and traditions. It is further intended that the panel should have at least one (1) professional attorney Judge. In the event that no professional attorney is qualified under the terms of this Code, then the Chief Judge shall cause a professional attorney Judge to be hired for the particular case or session where a professional attorney is unavailable or unable to serve. The cost of such professional attorney shall be assessed to the Reservation from which an appeal is submitted.

SECTION V. JUDICIAL COMPENSATION

Each respective member Tribal Council shall be responsible for compensating the Judges designated from their Reservation to act as Court of Appeals Judge.

SECTION VI. COURT OF APPEALS TO BE A COURT OF RECORD

The proceedings of the Court of Appeals shall be recorded by a stenographer or a high quality electronic recorder, or both. The English language shall be the official language of the Court of Appeals. Interpreters shall be provided when determined appropriate by the Chief Judge.

SECTION VII. ADMINISTRATION OF THE COURT OF APPEALS

A. The Court of Appeals shall convene at the call of the Chief Appellate Judge or at the request of two (2) Appellate Judges, or at the request of any member Tribal Council pursuant to any appropriately passed resolution. Such sessions shall be no less than on the first Monday of April, July, October, and January, or if such day is a holiday, then the first regular business day thereafter.

B. Oral hearings granted shall be heard at the time and place designated by the Chief Judge within the external boundaries of any of the Indian Reservations served by the Court, with preference being given to rotate the location for hearing among the member Reservations. All appeals filed with the Clerk of the Court of Appeals shall be heard at the next session of the Court, unless:

(1) The Court grants an expedited hearing pursuant to the motion of a party or on the Court's own motion; or

(2) The Court grants a continuance for good cause.

C. The Clerk of the Court of Appeals shall be located at the Tribal Courthouse in Fort Thompson, South Dakota.

D. All documents required to be filed in appellate matters shall be filed with said Appellate Court Clerk. The Clerk shall forward copies of all such documents filed to the Chief Appellate Judge of the Court of Appeals for disposition. Upon the acceptance of jurisdiction by the Chief Judge, the Chief Judge shall direct that a complete file thereof be forwarded to all regular judges of the Court of Appeals.

E. The Court of Appeals shall not consider any matter unless two (2) Appellate Judges are serving in their terms or otherwise a majority of the Court, if the number of member Tribal Governments participating increases.

F. The Chief Appellate Judge shall oversee the general operation of the Appeals Court system and administer any procedural matters pertaining thereto. The Court Administrator shall be responsible for Court management and the daily administration of the Court, supervising employees, maintaining the calendar, developing and maintaining a Court record system, assisting the Chief Judge in planning and budgeting, coordinating Intertribal Court activities, and performing other related duties as appropriate.

SECTION VIII. VACANCIES IN THE COURT OF APPEALS - TERMS OF OFFICE

In the event the position of an Appeals Judge has been filled and subsequently become vacant, the Tribal Government who is responsible for such position shall take immediate action to fill said position within thirty (30) days of the date the position was vacated. Said position shall be filled, if possible, prior to the expiration of the term of office.

All terms of office for Appellate Judges, with the exception cited in Section XIII(A), shall be for one (1) year and run concurrently with the Court fiscal year. All Appellate Judges, with the exception noted above, whether filling partial or full fiscal year terms, shall be appointed annually as provided for within Section IV.

SECTION IX. REMOVAL OF APPEALS JUDGES

A. Any Appeals Judge may be removed for cause. For the purposes of this Section, removal for cause shall be:

(1) Performance of official duties while intoxicated or under the intemperate influence of any drug or mind/behavior altering substance; or

(2) Upon conviction for a felony; or

(3) Upon conviction for a misdemeanor involving a crime of moral turpitude; or

(4) Upon disbarment by any State or Federal Court; or

(5) For failure to perform the duties of the office for a period of three (3) months from the date that there are duties required to be performed, but have not been performed; or

(6) Willful misconduct in office.

B. Cause for removal shall be determined by a panel consisting of:

(1) The Chairman of the Law and Order Committee of each Tribe served by the Court of Appeals;

(2) A member of the Court of Appeals; and

(3) The Chairperson of the Tribe who is represented by the person to be removed.

There shall be no appeal from a decision by the panel. Notice for a hearing to show cause why the Judge should not be removed shall be served upon the Judge by registered mail, return receipt requested, and shall give such Judge twenty (20) days in which to request a hearing. If no hearing is requested within twenty days from the date of service upon the Judge, then such panel may hear any complaint in absentia and make its determination. Such decision shall be served upon the Judge in the same manner as above.

C. Proceedings for removal shall commence by any member of the Tribal Councils served by the Court of Appeals filing a statement of formal complaint, not obviously unfounded or frivolous, and alleging facts indicating a cause for removal, with the chairperson of the Council. Such statement shall state the particular acts complained of. The chairperson of that Council shall file such complaint or statement with the Clerk of the Court of Appeals who shall in turn cause a Notice of Show Cause Hearing to be served upon the affected Judge and shall forthwith notify the members of the panel referred to herein. Such notice shall comply with all principles of due process of law. Service shall be accomplished as stated above.

SECTION X. PROCEDURE IN THE COURT OF APPEALS

A. Any party adversely affected by a decision of a member Tribal Court in a civil case may appeal from such decision. Any party in a criminal case, except the prosecution, may appeal from any final order, commitment, or judgement of Tribal Court, with the exception that the prosecution may appeal to correct alleged procedural errors only.

B. Any appeal shall be commenced by the filing of an original Notice of Appeal and one copy, with the Clerk of the Court of Appeals, within thirty (30) days of the date the Tribal Court entered its final decision. Notice of said appeal shall also be served upon all parties and the Clerk of the Tribal Court from which the appeal is taken by the appealing party or their attorney. The Notice of Appeal shall specify: The parties to the appeal, the order, commitment or judgement appealed from; and a short statement of the reasons and grounds for appeal. Copies of the Notice of Appeal shall be mailed to or served upon all other parties in the case by registered mail. Registered mail receipts for each party notified must accompany the original Notice of Appeal sent to the Clerk of Court of Appeals and shall demonstrate proof of service.

C. A Notice of Appeal shall be accomplished by a cash bond of fifty dollars (\$50.00); (1) in any civil case; and (2) in any criminal case. A bond for costs shall otherwise have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed, the judgement or order affirmed, or such costs as the Court may direct if the judgement or order is modified or affirmed in part. However a forma pauperis or affidavit of indigency may be filed and granted in lieu of bond in the discretion of the Chief Judge or Acting Chief Judge pursuant to criteria to be established by the Court of Appeals.

D. The party taking the appeal shall be referred to as the appellant and the adverse party shall be referred to as the respondent. The name of the case shall be the same as that used by the Tribal Court.

E. In any case in which an appeal is filed as required by this Section, the appellant may petition the Tribal Court for an order staying the order, commitment, or judgement. An Appellate Judge of the Court of Appeals may consider and grant a stay if first denied by the Judge of the Tribal Court. No Appellate Judge may grant a stay if they have an apparent conflict of interest as defined within Section XII of this Code.

The Court shall grant such stay only when satisfied that the ends of justice require it, and upon such security as the Court may direct to safeguard any other party against damage by reason of delay. Therefore, a bond or cash payment may be required as a condition for granting a stay of judgement if it is reasonably likely that the appellant will not perform the judgement if the appeal is unsuccessful, or cannot pay the additional costs or rents represented by the appeal or the stay in judgement.

F. The Appellate Clerk shall forward copies of the Notice of Appeal to all Appellate Judges and the complete file to the Chief Judge, who shall determine whether the Court of Appeals has jurisdiction to hear the appeal and whether the appellant has complied with the procedural and substantive requirements for making an appeal.

G. If the Chief Judge of the Court of Appeals accepts jurisdiction and finds that the appeal is proper, then the Chief Judge shall issue a memorandum of approximate costs of the appeal to all parties, setting forth those costs. Upon the receipt by the Court of Appeals of all required bonds, the Chief Judge shall establish a briefing schedule for all parties. Such briefing schedule shall require an appellant's brief and respondent's brief, with an option in the appellant brief to submit a reply brief. The time requirements shall be at the discretion of the Chief Judge. No brief shall exceed sixty (60) pages, excluding appendices. Oral arguments shall be at the discretion of the Chief Judge or by the affirmative decision approving a petition for oral hearing by two (2) Appellate Judges.

H. All documents required to be filed in appellate matters shall be filed with said Appellate Court Clerk. The Clerk shall forward copies of all such documents filed to the Chief Judge of the Court of Appeals for disposition. Upon the acceptance of jurisdiction by the Chief Judge, the Chief Judge shall direct that a complete file thereof be forwarded to all Judges of the Court of Appeals.

I. The contents of the appellant's brief shall include:

- (1) A jurisdictional statement;
- (2) A brief statement of the nature of the appeal;
- (3) A brief statement of the proceedings in the lower Tribal Court;
- (4) The issues presented on appeal;
- (5) A statement of facts;
- (6) Argument; and
- (7) Conclusion.

In addition, the preface shall include a table of contents, a table of cases, a table of statutes, and a table of other authorities.

J. The brief of the respondent shall conform to the same requirements as stated above for the appellant.

K. The appellant may file a brief in reply to the brief of the respondent. The contents of the reply brief must be confined to new matter raised in the brief of the respondent.

L. The appellant shall, within ten (10) days after filing a Notice of Appeal, serve upon the respondent and with the Tribal Court Clerk, a designation of the portions of the record of the

lower Court which the appellant desires to be included in the appeal. The respondent shall have ten (10) days from the date served with such designation to add other portions to the record. All costs associated with the reproduction of the records to be submitted on appeal shall be paid for in advance by the requesting party, unless the appeal is in forma paupis. The designated record shall be submitted to the Tribal Court Clerk for processing and certification.

M. If no report or recording of all or any part of the proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within ten (10) days after filing a Notice of Appeal, prepare a statement of the proceedings from the best available means, including his recollection, and file a written notice of intention to file such a statement with the Clerk of the Tribal Court and the Clerk of the Appellate Court. The statement shall be served on the respondent as provided for in L above, who shall, within ten (10) days designate objections or amendments thereto. These together shall be submitted to the Tribal Court Clerk (ref. Section XL and XIVC).

N. The Court of Appeals may reverse, affirm, or modify any order or judgement appealed from, and may order the lower Court to add to, modify, or complete the findings so as to make the same conform to issues presented and the facts as the facts may be found to be by the Tribal Court from the evidence, and the findings when corrected, or may order a new trial or order that further proceedings be held. All decisions shall be by the majority, in writing, and signed by the participating Appellate Judges. If no majority is reached on a decision, then the decision of the Tribal Court is upheld.

The Court of Appeals shall issue a written memorandum of decision. The memorandum shall state: The facts, the issues to be decided, the rules of law applied, and the reasoning of the Court. No written memorandum is required if the Court of Appeals is unanimous in its decision and there is clear precedent for such decision, however, the Court may issue a per curiam opinion if it so desires.

O. The Chief Judge of the Court of Appeals may enter any subsequent order to effectuate justice and fair play to the parties in accordance with the decision of the Court of Appeals.

P. Within twenty (20) days after a decision has been rendered by the Court, either party may petition the Court for rehearing. Such petition shall be submitted to the Appellate Court Clerk, and simultaneously served upon all parties, by registered mail, and must briefly set forth the alleged points of error. Adverse parties shall have ten (10) days to respond to such petition. A petition for rehearing shall operate to stay all proceedings until a decision is rendered thereon.

Q. All judgements and orders of the Intertribal Court of Appeals shall be enforceable through and by the respective member Tribal Courts to which these judgements and orders shall issue. Upon compliance with and satisfaction of the judgement or order, the respective member Tribal Court Clerk shall forthwith issue a Satisfaction of Judgement to the Clerk of the Appeals Court.

In all cases, a neglect of thirty (30) days after the affirmance on appeal of a judgement directing the payment of the money and the filing of the judgement in Tribal Court to pay the amount directed, shall be deemed a breach of the undertaking of such appeal.

R. Upon good cause shown, the Chief Judge may enlarge the time any party has to comply with the Rules of Court or the time requirements set forth in this Section.

S. The Intertribal Court of Appeals, by action of the majority of the Appellate Judges in regular service, may from time to time, make and amend such rules as deemed appropriate for the proper and efficient administration of the Court.

T. On any procedural issues arising, the Court may, in its discretion, consult and apply, in turn:

- (1) Applicable Federal law; and
- (2) Applicable State law.

SECTION XI. JURISDICTION

A. The Chief Appellate Judge, or his designee as otherwise provided for in this Code, shall determine whether or not the Appeals Court possesses jurisdiction in any civil or criminal case appealed to the Court, and shall thereupon proceed in accordance with this determination and the other provisions of this Code.

Civil and criminal appeals to the Intertribal Court of Appeals from member Tribes may be taken from:

- (1) A judgement;
- (2) An order affecting a substantial right, made in any action, that determines the action and prevents a judgement from which an appeal might be taken;
- (3) An order which grants, refuses, continues, dissolves, or modifies any of the remedies of arrest and bail, claim and delivery, injunction, attachment, garnishment, receivership, or deposit in Court; or
- (4) Any other order which in the Court's discretion be allowed by the Court as provided by Court rules when the

Court considers that the ends of justice will be served, or as otherwise provided in Section XA of this Code.

B. In determining the Court's rulings and decisions on appeals before the Court, the Court shall apply the substantive law of the member Tribal Code from the which the case originated and all applicable Federal laws, statutes, and acts.

C. Each member Tribal government and Tribal Court shall grant full faith and credit to all decisions and rulings of the Intertribal Court of Appeals in accordance with Section I of this Code and the other Sections contained herein. Such express grant of full faith and credit shall include and extend to orders for extradition that may issue from the Court of Appeals.

D. When the appeal is from any order subject to appeal, the Appeals Court may review all matters appearing on the record relevant to the question of whether the order appealed from is erroneous.

E. This Intertribal Court of Appeals Uniform Code supersedes any and all other Tribal Appeals Procedures that may be in existence for any Tribe. Further, by enactment of this Code through appropriate resolution and its becoming effective, member Tribes agree and affirm that any and all of these other Tribal Appeals Procedures shall thereupon be null and void and deemed repealed, and that any and all Tribal Court appeals cases pending at the time this Code becomes effective shall be forthwith transferred to the Intertribal Court of Appeals for further action in accordance with this Code.

F. The Intertribal Court of Appeals shall possess power of contempt to enforce its decisions within the boundaries of member Tribal reservations.

SECTION XII. CONFLICTS OF INTEREST

A. It is intended that no Judge shall be a member of a panel of Judges hearing or deciding an appeal if such Judge:

(1) Heard the case on its merits in the Tribal Court;

(2) Is related by blood or marriage, if such relationship is in the first degree, such as a brother, sister, parent, spouse, child, stepchild, foster child, adopted child, former spouse, grandparent, great-grandparent, uncle, or aunt (whether by blood or marriage), or first-cousin, or the like;

(3) Would benefit personally in a way and to a greater degree than members of the general public of the respective Indian Reservation would benefit; or

(4) Would otherwise be a position where his or her impartial judgement might be significantly affected.

No Judge shall be barred from hearing an appeal by virtue of the fact alone that the parties before the Court of Appeals are members of the same Tribe as the Judge.

B. Any Appellate Judge shall disqualify himself in any appellate case in which he/she has a substantial interest, or as otherwise provided for above, as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.

Either party to an appeal, in accordance with the above provisions, may file an affidavit of prejudice with the Clerk of the Appeals Court. The affidavit shall state the facts and reasons for the belief that bias or prejudice exists, and shall be filed no less than twenty (20) days before the scheduled hearing date or other proceeding. A party may file only one such affidavit in any case.

SECTION XIII. CHIEF APPELLATE JUDGE

A. The Chief Appellate Judge shall be designated to serve for a one (1) year term commencing the date this Resolution becomes effective. If the initial one (1) year term ends during the Court fiscal year, the Chief Appellate Judge shall continue his term as Chief Judge to the end of the then fiscal year, however, all subsequent appointments for the Chief Appellate Judge shall run for one (1) year concurrent with the regular Court fiscal year.

B. Such position shall rotate among the member Tribes. The Chairperson of a member Tribe shall designate a Judge(s) to serve within the pool of Judges from which the Appellate Judges are selected by each member Tribe's Tribal Council. Such persons designated do not have to be a Judge in the chairperson's Tribe's judicial system so long as such Judge is within the judicial system of one of the member Tribes.

C. The first Tribal Council to enact this Resolution shall have its chairperson select the Chief Judge the first year of the Court, or as otherwise provided for above. The second Tribal Council to enact this Resolution shall have its chairperson select the Chief Judge for the second year of the Court, and so on. In the event of a tie between or among the Tribal Councils enacting this Resolution, then such tying Tribe which has the most numerous Judges in its judicial system shall be considered to be prior in time in enacting this Resolution.

D. In the event of a disqualification of the Chief Judge for any reason provided for herein, then the Chief Judge shall appoint another Appellate Judge to act in his/her stead in hearing or deciding the case before the Court and in deciding the

matter of Court jurisdiction. However, the Chief Judge shall retain such authority pertaining to administration, procedure, and other matters not affecting the decision before the Court for which he/she is disqualified.

SECTION XIV. DUTIES OF THE TRIBAL COURT CLERK

Duties:

A. In addition to any duties for which the Clerk of the Tribal Court is responsible, the member Tribal Court Clerk shall keep and maintain complete and accurate files and records of all documents filed with the Tribal Court and all proceedings held in the Tribal Court.

B. The Clerk may make and certify to the accuracy of true and correct copies of any documents filed with the Tribal Court which are otherwise available for public inspection.

C. The Clerk shall prepare, certify to the accuracy of, and transmit to the Court of Appeals, the record, including verbatim records of hearings, etc., of any cases for which an appeal is taken or so much of such record as the parties may designate, and perform other Court duties and responsibilities in accordance with Appeals Court Rules, judgements and orders.

D. The Clerk shall maintain a current compilation of the decisions of the Court of Appeals in chronological order. Such decisions shall be made available to the public upon request and upon payment of the cost of reproduction.

E. The duties of the Clerk may be performed by a deputy or assistant Clerk appointed, who shall have the same powers and be subject to the same duties, obligations, and penalties as the Clerk of the Tribal Court.

F. Penalties: It shall be a criminal offense, punishable by a fine not to exceed five hundred dollars (\$500.00), and/or imprisonment for a clerk, deputy, or assistant clerk, or any other person to knowingly make or keep a false file, record or certificate, or to alter, amend, or destroy any file, record or transcript of the Tribal Court or Court of Appeals, without lawful authority, or to otherwise tamper with, falsify, conceal, or destroy any file, record, document, or transcript of such Courts.

SECTION XV. RESOLUTION BECOMES EFFECTIVE

This Resolution shall not become effective as to all member Tribes until at least three (3) South Dakota Sioux Tribes adopt this exact same Resolution. After adoption, a certified copy of the Resolution should be sent to the Court Administrator of the Intertribal Court of Appeals.

SECTION XVI. DEFINITIONS

1. "Member Tribe" shall mean a Federally recognized Indian Tribe which is unanimously accepted by those other Indian Tribes who have adopted this Resolution and its amendments in total.

2. "Lay Judge" shall mean a person selected according to Tribal law who is not a graduate of an accredited law school in the United States or who is not a member of a State Bar.

SECTION XVII. ALLOCATION OF COST OF MAINTAINING INTERTRIBAL COURT OF APPEALS

A. It is intended that the Court of Appeals be supported financially from the funds of the participating Tribal governments in proportion to the use and benefit derived therefrom by each of the participating Tribes. Such allocation of cost of maintaining the Court of Appeals shall be approximated by the Chief Judge in consultation with the Appellate Court Policy Board by March 1 of each year. Such approximation shall be the basis upon which the Appellate Court Policy Board shall formulate a budget to present to each of the participating Tribal governing Councils for appropriate adoption. Such budget proposal shall show the expenditures of the Court for the preceding twelve-month period, the allocation of costs to each participating Tribe, the amount collected from each participating Tribe, the financial needs of the Court to operate during the next budget period at the same level of service then operating, the financial needs of the Court to operate at desired levels for the forthcoming budget period, and such other information as is necessary to account for the past financial operation of the Court and its future anticipated needs.

Budget requests for funding of the Court shall be submitted to the respective governing Councils of the participating Tribes by no later than July 1 of each year. The budget proposal shall contain the amount requested of each participating Tribe and the formula relied upon to obtain the amount requested of each participating Tribe.

B. The method to calculate the amount required for each participating Tribe for the next year's operating budget shall be as follows:

The number of criminal cases appealed from the Tribal Court of the

Reservation and the number of civil cases appealed from the Tribal Court of the Reservation divided by the total number of cases docketed with the Court of Appeals. Such numbers shall equal a percent which is then multiplied with the requested budget amount.

Example: 50 criminal cases from Rosebud + 100 civil cases from Rosebud would equal 37.5% of 400 total cases docketed

with the Court of Appeals; 37.5% X \$50,000 budget requested
= \$18,750 to be provided by Rosebud.

If any Tribal Council contests the amount allocated to it, it shall, within thirty (30) days, note its challenge with the Chief Appellate Judge who shall notify the chairperson of the Appellate Court Policy Board. The Appellate Court Policy Board shall, within ten (10) days, convene to recalculate the allocation to determine its accuracy based upon the above formula. If the calculations are accurate and the data relied upon to calculate the allocation is accurate, then such allocation shall be determined final. Once an allocation of budget to a Reservation governing Council has been finalized as herein this paragraph described, then the only remaining method of changing said allocation is for the contesting Tribal Council to request the governing Councils of the participating Reservations to affirmatively vote to accept the budget or such portion thereof as proposed by the contesting Tribal Council.

C. The fiscal year for the Court of Appeals shall be from October 1 to September 30. If any of the participating Tribal Councils have not affirmatively acted upon and accepted the proposed budget by September 15, and if none of the participating Tribal Councils have rejected the proposed budget by such date, then such proposed budget shall be deemed adopted and shall be binding upon all participating Tribal Councils and each respective Tribal Government's budget shall reflect such Court of Appeals budget as provided herein.

For the first two (2) fiscal years of the operation of the Court of Appeals, it is anticipated that all funding will be provided by a grant from the Law Enforcement Assistance Administration within the United States Department of Justice, thus, the herein described formula will not be applied until the third fiscal year of operation.

SECTION XVIII. APPELLATE COURT POLICY BOARD

A. There is hereby created an Appellate Court Policy Board comprised of two (2) representatives from each member Reservation. The representatives to such Board shall be selected by the Tribal chairperson of their respective Tribes. No person who is a Judge may be a member of the Appellate Court Policy Board.

B. The Appellate Court Policy Board shall elect their own officers and shall determine their own procedures. All costs related to attendance at meetings and other expenses shall be paid by the respective member Tribe. The Board shall meet not less than semi-annually, but may meet as often as necessary. The chairperson of the Board is authorized to call a meeting of the Board with at least two (2) days notice or with less notice if with the consent of all the members. Special meetings may be

called by two (2) members who represent at least two (2) Reservations.

C. The initial members of the Appellate Court Policy Board shall be named by no later than thirty (30) days after at least three (3) Tribes have adopted this Code. If not all persons are named by the respective chairpersons within thirty (30) days as described herein, then those persons who have been named shall be authorized to select representatives from the particular Tribe that has failed to name its representatives after giving notice that they intend to so name representatives, if the respective chairperson has failed to so act within fifteen (15) days of the date of notice.

D. The Appellate Court Policy Board shall have review and approval authority of all annual budget and operational matters of the Appellate Court system, except as otherwise provided in this Code. The Board shall approve all personnel policies and procedures and generally insure compliance with set policies. It will further receive all pertinent reports from the Court Administrator and/or Chief Appellate Judge, and in turn, have the responsibility of appropriately reporting to participating Tribal governing bodies.

SECTION XIX. AMENDMENTS TO CODE

Amendments may be made to this Uniform Code through and by the united action of respective member Tribal Governments only. Any and all proposed amendments shall be duly enacted by Tribal Council resolutions, each containing precisely identical wording. No amendments to this Code shall be deemed effective until all member Tribal Governments have effectively enacted the same proposed amendment.

SECTION XX. WITHDRAWAL OF A MEMBER TRIBE

Any Tribal Government participating in the Court of Appeals as provided herein may withdraw from participation. However, such withdrawal shall not become effective until the completion of the then fiscal year. The participating Tribe who chooses to withdraw shall be obligated to fund its allocated portion of the Court of Appeals budget for the current fiscal year.

In the event that any member Tribe does withdraw at the end of the fiscal year, or in the event that an additional Tribal Government is accepted under this Code, the budget of the Court of Appeals shall be adjusted according to the formula described in Section XVII to reflect the then current information, and such recalculation shall be final, except as otherwise provided in this Code.

SECTION XXI. CERTIFICATION OF CODE ADOPTION

Adopted in total this _____ day of _____,
19____, by:

ATTEST: _____ By: _____
Secretary Rosebud Sioux Tribe

ATTEST: _____ By: _____
Secretary Crow Creek Sioux Tribe

ATTEST _____ By: _____
Secretary Lower Brule Sioux Tribe

Adopted by Lower Brule Sioux Tribe by Res. No. 81-73, dtd.
2/5/81, approval effective 3/5/81.

Adopted by Rosebud Sioux Tribe by Res. No. 81-11, dtd.
2/25/81, approval effective 4/2/81.

Adopted by Crow Creek Sioux Tribe by Res. No.
CC-81-01-19-05, dtd. 1/19/81, approved effective 4/13/81.

INTERTRIBAL COURT OF APPEALS

COURT RULES

RULE 1. Expedited procedure.

- (a) Within ten (10) days after receipt of appellant's opening brief, the respondent may, in lieu of a brief, serve and file a motion:
 - 1) To dismiss the appeal on the basis that the appeal is not within the jurisdiction of the Court; or
 - 2) To affirm the order or judgement appealed from on the basis that:
 - (i) The grounds for appeal are so unsubstantial as not to merit further proceedings and consideration by the Court; or
 - (ii) The issue on appeal is factual and clearly there is sufficient evidence to support the jury verdict or findings of fact below; or
 - (iii) The issue on appeal is one of judicial discretion and clearly there was no abuse of discretion.

The filing of the motion tolls the time for filing of respondent's brief. The motion shall state the ground or grounds upon which it is based together with a citation of authorities and record references to evidence relied upon. It shall not be a brief and shall not contain argument. If the motion shall be granted by unanimous action of the Court an order or opinion will be entered and a mandate will issue thereon; if the motion shall not be unanimously granted, it shall be denied. If the motion is denied, the respondent's brief will be due within twenty (20) days after such denial.

- (b) After filing of the appellant's opening brief, the Court, upon its own motion, may by unanimous action dismiss the appeal if the Court lacks jurisdiction; or may summarily reverse in cases of manifest error; or may summarily affirm the judgement or order appealed from on the basis that:
 - (i) The grounds of appeal are so unsubstantial as not to merit further proceedings and consideration by the Court; or
 - (ii) The issue on appeal is factual and clearly there is sufficient evidence to support the jury verdict or findings of fact below; or
 - (iii) The issue on appeal is one of judicial discretion and clearly there was no abuse of discretion.
- (c) Within ten (10) days of the filing of appellant's brief, a party may serve and file a motion:
 - 1) To reverse the order or judgement appealed from on the basis that manifest error is present; or
 - 2) For an expedited hearing wherein:
 - (i) The case is of such a compelling nature as to warrant immediate attention; or
 - (ii) Further delay may demonstrably result in grave harm.

RULE 2. Stay of execution pending outcome of appeal.

After an appeal has been filed a party may petition the Intertribal Court of Appeals for a stay of execution of the Tribal Court order, judgement or commitment if first denied by the Tribal Court. Such petition shall be in writing and state:

(i) the reasons for denial of stay of execution by the Tribal Court; and

(ii) the reasons for the relief requested and the facts relied upon.

The petition original shall be filed with an appellate judge in regular service with the Intertribal Court of Appeals, but may be filed with an appellate judge in alternate service from only that particular Reservation and concerning only that appellate court case in which the regular appellate judge has been disqualified in accordance with Section XII of the Uniform Code, who shall consider the petition in accordance with provisions contained in the Uniform Code (Section X, (E.)), and one copy each of the petition shall be filed with the Appellate Court Clerk and the Tribal Court. Reasonable notice of the petition shall be given to all parties in accordance with provisions contained in the Tribal Code from the Reservation in which the action is initiated.

Relief available in the Court of Appeals under this rule may be conditioned upon the filing of a bond or other appropriate security. If the stay of execution is granted, the Order shall issue to all parties and the Appellate Court Clerk and the Tribal Court from whence the appeal originated. The Court of Appeals shall possess full review authority on Orders staying execution issued by a single appellate judge.

RULE 3. Proceedings in forma pauperis.

A party to an action in a tribal court who desires to proceed on appeal in forma pauperis to the Intertribal Court of Appeals shall, with the Notice of Appeal, file an affidavit/application showing, in the detail and format prescribed by the Court, his inability to pay the bond, fees and costs or to give security therefor, and his belief that he is entitled to redress. If the affidavit/application is granted, the party may proceed without prepayment of fees or costs or the giving of security therefor; if denied, the Court of Appeals shall state in writing the reasons for the denial.

RULE 4. Filing and service of briefs.

(a) All briefs filed by the parties to an appeal in the Intertribal Court of Appeals shall also be served simultaneously by each party upon the opposing party (or through their counsel): Service shall be accomplished by certified mail to the opposing party's last known mailing address, or absent a mailing address, the tribal court may have briefs served in accordance with that Tribe's Tribal Code requirements or Tribal Court Rule within which reservation the parties to be served reside. When briefs are forwarded to the Appellate Court Clerk for filing by mail they shall be accompanied by an affidavit of mailing or certificate of service of mailing and shall be deemed to be filed as of the date of mailing.

- (b) All briefs filed with the Intertribal Court of Appeals shall be submitted in one original and six (6) complete copies.
- (c) The appellant shall serve and file his brief within 40 days after the date on which the record on appeal is filed with the Appellate Court Clerk. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but if this option is chosen, the reply must be filed at least 10 days before the scheduled oral hearing.
- (d) If an appellant fails to file his brief within the time provided by this rule, or within the time as extended or otherwise established by Court Order, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the Court.

RULE 5. Time for perfecting appeal.

The Tribal Court Clerk of the Tribe from which an appeal has originated shall maintain a record of the time in days taken by the appellant and respondent in complying with time restrictions contained in Section X (L.) and (M.) of the Uniform Code. This may be accomplished through use of a calendar or other appropriate means, and which timing shall commence in each case when notified by the Appellate Court Clerk that an appeal has been filed from the tribal court. The Tribal Court Clerk shall in turn notify the Appellate Court Clerk of any party exceeding these time restrictions.

RULE 6. Size of documents submitted.

All original forms, documents, briefs, motions, affidavits and other papers filed with the Intertribal Court of Appeals shall conform in size to 8½ inches by 11 inches. Non-original filings of a larger size shall be neatly folded to no larger than 8½ inches by 11 inches prior to submission to the Appellate Court Clerk.

RULE 7. Appeal bonds.

All cash bonds payable to the Intertribal Court of Appeals to accomplish a Notice of Appeal shall be payable by certified check or money order only.

RULE 8. Standardized forms for use in the Intertribal Court of Appeals.

The Intertribal Court of Appeals adopts the use of the following standardized forms, shown in the Appendix, which shall be used for all the below subscribed actions in this Court except as otherwise noted herein:

- 1) Notice of Appeal (must accompany any other formal Notice, except where the other Notice contains the same essential data elements and information);
- 2) Application And Affidavit For Proceeding In Forma Pauperis;
- 3) Order of Stay of Execution;
- 4) Petition For Rehearing (or other petition containing the same essential data elements and information);

- 5) Order of the Court of Appeals;
- 6) Satisfaction of Judgement;
- 7) Call of the Court; and
- 8) Affidavit of Prejudice For Judicial Disqualification (or other affidavit containing the same essential data elements and information).

RULE 9. Record on appeal.

- (a) All papers and documents comprising the court record as designated by parties as the record on appeal pursuant to Uniform Code Section X (L.), shall be submitted by the Tribal Court Clerk in seven (7) complete copies to the Appellate Court Clerk within fifteen (15) days after the final date the respondent is permitted to indicate any additional portions to the record on appeal. Reproduction costs for all papers, transcripts, exhibits and other documents comprising the record on appeal shall be paid for in advance by the requesting party to the Tribal Court Clerk.
- (b) Where the transcript of a court hearing or trial designated as the record on appeal has been recorded on clearly audible cassette tape and would, if transcribed for the record, exceed twenty (20) typed pages, parties shall designate the appropriate sections of the tape recording for audio reproduction by the Appellate Court Clerk. An audio reproduction fee of \$1.00 shall be assessed by the Appellate Court Clerk for reproducing each required tape cassette copy of the transcript. A waiver for audio reproduction may be obtained upon showing of good cause.

RULE 10. Dismissal of appeal.

In the discretion of the Court an appeal may be dismissed for failure to substantially comply with established court procedures or rules, or for lack of moving action on a case in excess of six (6) months.

RULE 11. Time for response to motions.

The response to an initiating Motion or other requested action by an opposing or adverse party shall be received by the Court within seven (7) calendar days after the date of the initiating Motion or action. The date used to calculate the time period shall be contained on the registered mail receipts or certificate of service -- of which one or the other must accompany each Motion or action. Absent a showing of good cause, responses to initiating Motions submitted after this time period has expired shall not be considered, and the Court may rule on the motion submitted.

CASE NO. _____

CASE NO.	DATE APPEAL FILED	TRIBAL COURT	OTHER CASE INFORMATION
TRIBAL CT. CASE NAME		DATE OF JUDGMENT OR ORDER APPEALED FROM:	
APPELLANT	RESPONDENT		
ATTORNEY/COUNSEL	ATTORNEY/COUNSEL		
			TRIBAL COURT JUDGE:

[illegible]

**INTERTRIBAL COURT OF APPEALS
NOTICE OF APPEAL**

_____ Plaintiff	}	NOTICE OF APPEAL
V. _____ _____ Defendant		

Notice is hereby given that _____, above named, hereby
appeals to the Intertribal Court of Appeals from the _____ Sioux
Tribal Court, entered in this action on the _____ day of _____,
19_____.

(S) _____

(Address)
Appellant/Attorney for Appellant

CASE NAME: _____	V.	_____
PARTIES TO THE APPEALS: (name and address)		
Appellant(s): (Person filing appeal)		Respondent(s): (Person answering appeal)

Attorney/Counsel:

Attorney/Counsel:

DESCRIPTION OF ORDER OR JUDGEMENT APPEALED FROM:

DATE OF JUDGEMENT OR ORDER: _____, 19_____.

BY JUDGE: _____.

CONCISE, SHORT STATEMENT OF THE REASON AND GROUNDS FOR APPEAL:

NOTE: Filing of Notice of Appeal shall be accomplished by a cash bond (money order or certified check only) of \$50.00, or an affidavit of indigency subscribed and sworn to before a Notary Public of South Dakota stating the conditions of inability to file the bond.

INTERTRIBAL COURT OF APPEALS

	Plaintiff	*	
v.		*	APPLICATION AND AFFIDAVIT FOR
		*	PROCEEDING ON APPEAL IN FORMA
		*	PAUPERIS
	Defendant	*	
		*	

I, _____ being first duly sworn, depose and say that I am the plaintiff/defendant in the above-entitled case in the _____ Tribal Court; that in support of my application to proceed on appeal without being required to file the bond, prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses that I have made to the questions and instructions below relating to my ability to pay are true.

1. Are you presently employed: ☐ yes ☐ no
 - a. If yes, state your income per month: \$ _____, and address of your employer: _____
 - b. If no, give date of last employment: _____, and monthly income: \$ _____.

2. The number of persons dependent upon you for support: _____.

3. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of lease/rent payments, interest, dividends, or other source? ☐ yes ☐ no

If yes, describe the source(s) and state the total amount you received:

4. Do you own any cash or checking or savings account: ☐ yes ☐ no

If yes, state the total value: \$ _____.

5. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

☐ yes ☐ no

If yes, describe the property: _____

_____ and state the total approximate value of the items owned: \$ _____.

APPLICATION AND AFFIDAVIT FOR PROCEEDING ON APPEAL IN FORMA PAUPERIS
Continued, Page Two

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties of perjury.

(S) _____

Subscribed and sworn to before me this _____ day of _____, 19_____.

Notary Public

(Seal)

NATIONAL CENTER FOR STATE COURTS
Northeastern Regional Office
Osgood Hill
723 Osgood Street
No. Andover, Mass. 01845