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MENOMINEE TRIBAL COURT " MANUAL

November, 1982

Prepared by:

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National Center for State Courts
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American National Bank Building
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St. Paul, Minnesota 55101

Library

National Center for State Courts
300 Newport Ave.
Williamsburg, VA 23185

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I. MENOMINEE JUDICIAL SYSTEM

The Menominee tribal code authorizes and provides for a lower court and supreme court system for reservation tribal members. The courts are currently exercising jurisdiction over all reservation residents "subject to any contrary provisions exceptions or limitations contained in either federal law, the Tribal Constitution, or as expressly stated elsewhere in the law and order code".¹ Jurisdiction over Indian and non-Indian parties is summarized in Chart 1 below.

CHART 1		
	<u>Criminal Jurisdiction</u>	<u>Civil Jurisdiction</u>
• Indian Plaintiff	Yes	Yes
• Indian Defendant	Yes	Yes
• Non-Indian Defendant	No (conflicting federal law)	Yes, if mini- mum contacts with the reservation
• Non-Indian Plaintiff	Yes, may file crim- inal complaint	may file civil complaint if minimum contacts with reservation

The Menominee Judicial System presently operates under a code adopted by the tribal council.² Both courts utilize the same staff which consists of a chief court clerk, two deputy

¹ Tribal Judiciary and Interim Law and Order Code § 1-7-2(2).

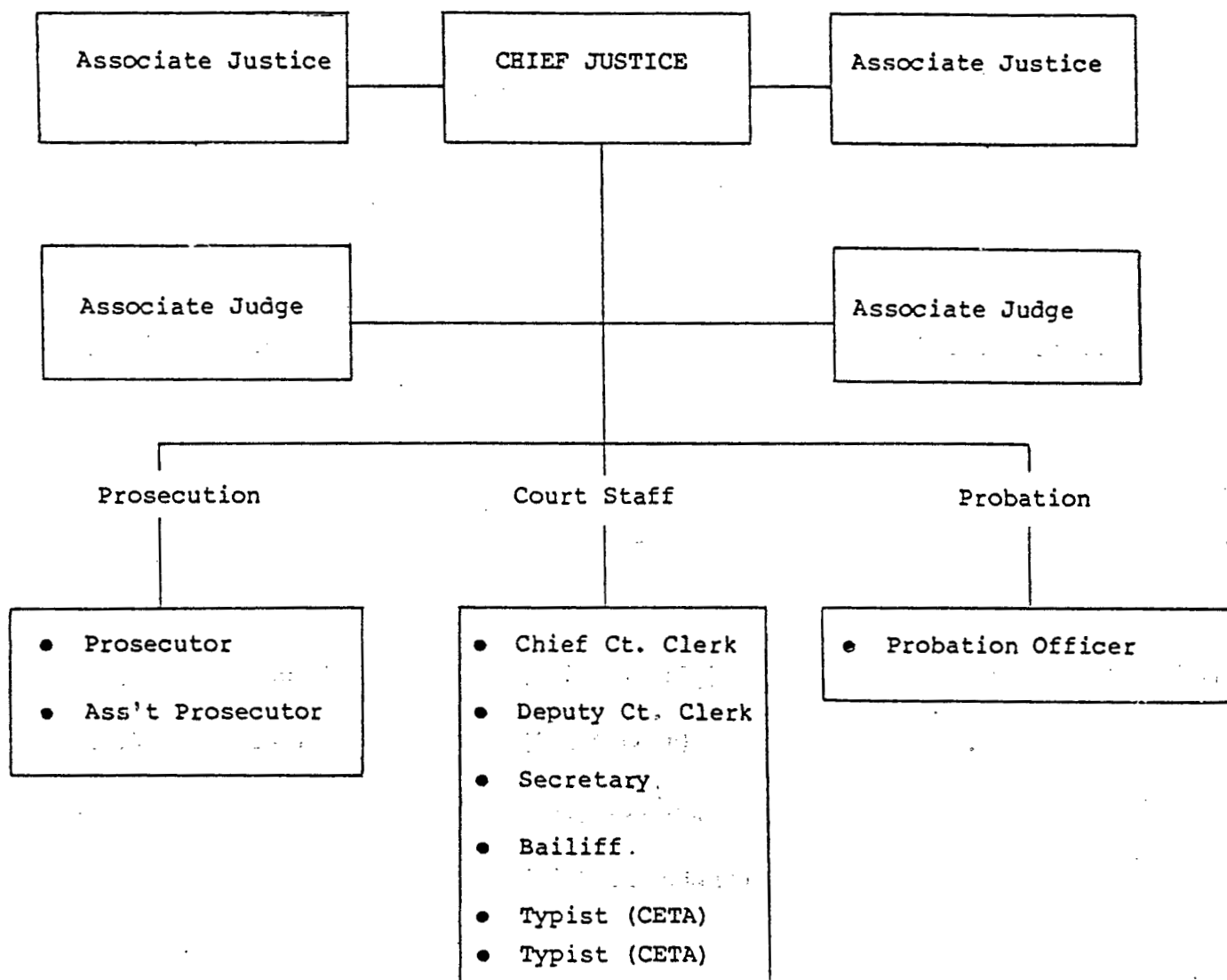
² The court was a CFR court up until 1976.

clerks, probation officer, bailiff, prosecutor, and (part-time) assistant prosecutor. The court staff are tribal employees and all revenues collected by the court are deposited in a tribal court fund.

The code also authorizes "such (trial) judges as the tribal legislature may determine for Tribal courts." (Explanation provided) Currently, two positions are authorized for the trial court, both of which were recently filled by tribal council appointment. These trial judges are appointed for two year terms and can be removed only for cause by the tribal Legislature during their term.

Tribal code § 1-2-2(1)(a) also authorizes an appellate court system called the Supreme Court, composed of a chief justice and two associates justices who are appointed by the tribal council for four year terms. They may not be removed during their term except for cause. Presently, the chief justice and only one associate justice position are filled. Supreme court justices also hear trials as tribal court judges when necessary. In such cases judges are brought in from other reservations to hear any resulting appeals.

MENOMINEE COURT ORGANIZATION*



* The tribal council has licensed five (5) individuals to act as lay advocates (including Luke Beaupray, Wesley Martin, and Mr. Chevalier).

National Center for State Courts

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Judge Robert A. Wenke
Superior Court of Los Angeles, CA

October 5, 1982

Mr. Bill Sunrise
Facilities Engineering Staff
Bureau of Indian Affairs
P.O. Box 1248
Albuquerque, N.M. 87103

RE: MENOMINEE TRIBAL COURT FACILITIES PLANS

Dear Mr. Sunrise:

As part of a contract the National Center for State Courts has with BIA, I have been asked to review the proposed plans for new judicial facilities on the Menominee Reservation.

As I indicated in our telephone discussion of Monday, October 4, 1982, the court forwarded to me a copy of a proposed floor plan that was discussed on Wednesday, September 29, 1982. At that meeting the court was informed that the plans would be finalized after the meeting. Nevertheless, I hope the Bureau will still be able to consider the observations and comments submitted herein before the plans are finalized.

A review of the proposed plans does reveal a number of areas that should be revised if the new facilities are to properly serve the needs of the judiciary and Tribe. It is the National Center's recommendation that the following items need to be considered in the proposed Floor Plans.

COURTROOM

- No space has been provided for a clerk or reporter. The reporter should be close to the judge with adequate space for equipment and writing. Preferably the reporter's area should be part of the bench.
- The witness box should be closer to the jury to avoid any problem with hearing the witness.
- The jury box should be moved to the north wall of the courtroom so they will be closer to the jury deliberation room.
- The arrangement of tables and chairs for parties and witnesses should be positioned in the area forward of the railing before plans for the courtroom are finalized. The existing plans and space may create a congested traffic pattern problem.

JURY ROOM

- Jurors in deliberation should have direct and private access to at least a single washroom. The present floor plans would require a juror to be released from the jury room (during deliberation) to use a washroom. Since the proposed washrooms are public there is danger that the juror may come in contact with someone that has an interest in the case.

PROSECUTOR'S OFFICE

- This office should be located so that complainants, witnesses, defense attorneys, and the police do not have to go through the private judicial corridor to get to the office.

CLERK'S OFFICE

- Additional space could be made available to the clerk's office if the window into that area was moved to the lobby wall. The lobby wall would have to be moved a few feet to the north so the public would not be in the path of persons entering the building. The entrance from the lobby into the court area would only be the hallway (vestibule).
- There needs to be a counter in the clerk's office behind the window. The present plans provide no work area for clerks working at the window.

Mr. Sunrise

-3-

October 5, 1982

- No area has been set aside for the court's word processing equipment.

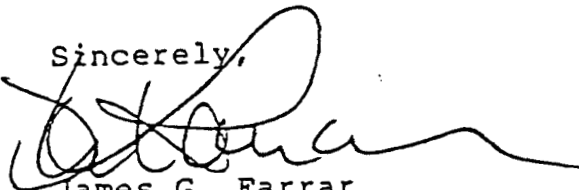
EVIDENCE ROOM

- This room should not be in the tribal court area of the new building. The storage area for police evidence should be in the police department.

Because you were hoping to finalize the plans within the next three (3) weeks, I felt it was critical that I get my general comments to you as quick as possible. If more time were available I would be willing to provide a more detail analysis. The Center is willing to work with you, the court, or the architect.

Please call (612/222-6331) if you have any questions.

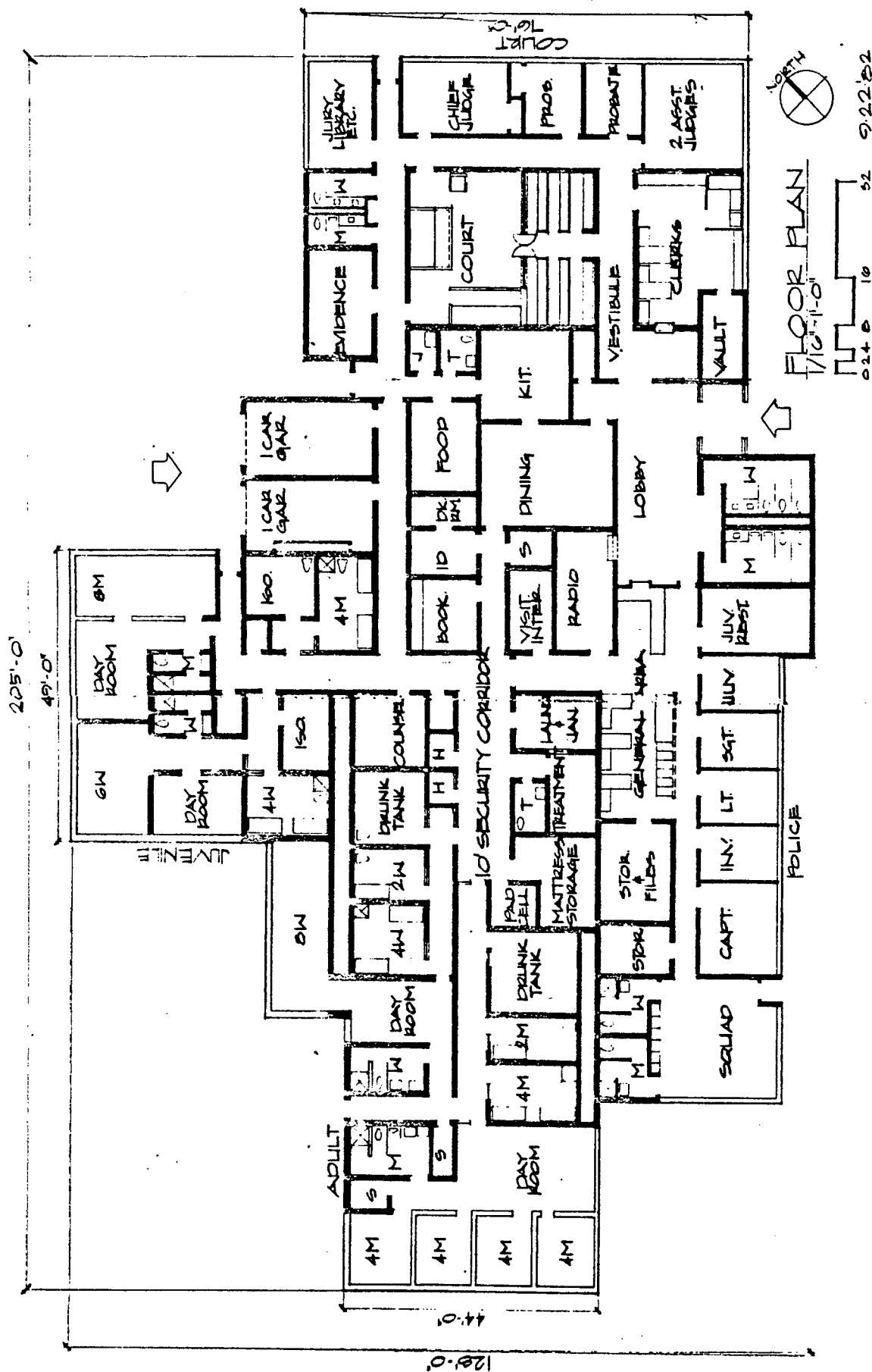
Sincerely,



James G. Farrar
Senior Staff Attorney

JGF/lag

cc: Justice Peters
Lucille Chapman
Shirley Daly
Perry Baker
Sylvia Wilbur



MINIMUM COURTROOM STANDARDS

- There should be a separate table, desk, or bench for the judge (preferably raised).
- There should be separate entrances to the courtroom for the judge and the public.
- There should be a table and chairs for the prosecutor and defendant.
- There should be separate seating areas and chairs for the public.
- There should be a tape recorder microphone for the judge, and preferably a separate microphone for the prosecutor, defendant and witness.
- The courtroom should not be shared with other activities during court sessions.
- When court is in session, there should be a sign at the public entrance to the courtroom identifying the name of the court and judge.
- The tape recorder should be within reach of the judge if not being operated by a clerk or reporter.
- There should be a chair and microphone near the judge for any person giving sworn testimony.
- The courtrooms should be capable of being closed so the public cannot see or hear non-traffic juvenile court proceedings or hearings.

Introduction

The menominee court has a good basic library. The library is located in the court building and is large, well lighted and generally pleasant. There is one large table for working.

The core collection of the library is enough to meet the basic research needs of the court. It contains state statutes, federal statutes and Indian law reports. However additional resource materials and supplements should be added to the existing library.

There is also no designated staff person to oversee and maintain the library and no existing system for maintaining it. Money for acquisitions and maintenance has not been built into the court budget in prior years.

I

EXISTING TRIBAL COURT LIBRARY

MENOMINEE TRIBAL COURT

Library Inventory

(as of March, 1982)

1. Central Library

- Indian Law Reporter, AILTP (1978-1980)
- Wisconsin Statutes (supps current to 1975-1976)
- United States Code Annotated (complete set)
- U.S. Code Congressional and Administrative News
(1980-Oct. 1981)
- West's Federal Case News (1982)
- 1981 Internal Revenue Code
- 1980 Internal Revenue Acts

2. Chief Justice Peter's Chambers

- Tribal Court Reporter (1980-1981) AILTP
- Federal Indian Law, Getches, Rosenfelt, Wilkinson
(1978)
- Handbook on Federal Indian Law, Cohen (1942)
- Indian Law Reporter (AILTP)
- Tribal Government (MCI)
- 25 Code of General Regulations (1978)

- 18 United States Code Annotated (Federal Rules)
- Federal Rules of Civil Procedure
- Trial Judges Guide to Objections to Evidence
- McCormick, Evidence (2nd Ed. West)
- Blacks Law Dictionary

3. Justice Skubitz's Chambers

- Wisconsin Statutes (No supplements)
- Tribal Code and Constitution

4. Prosecutor's Office

- Wisconsin Statutes, West, (1975-1976 Supps.)
- Studies for Indian Court Judges, NAICJA (1975)
- Model Indian Court Rules of Criminal Procedure, NAICJA (1977)
- Criminal Court Procedure Manual, NAICJA (1971)
- Statistical Data for Planning, Menominee Reservation. BIA (1976)

4. Prosecutor's Office (cont.)

- 25 Code of Federal Regulations (1938 and 1949)
- Financial Management for Planning and Action Grants, LEAA (1973)
- Wisconsin Administrative Code Rules of DNR
- Introduction to Legal Research, NAICJA (1974)
- Handbook of Federal Indian Law, Cohen (1942)
- The Art of Cross Examination, Rothblatt (1971)
- Wisconsin and Federal Rules of Civil Procedure, CLEW (1966)
- The Litigation Process in Tort Law, Geen (1945)
- CCH Federal Tax Guide (1977)
- Federal Income, Estate and Gift Tax, Bittker (1974)
- Commercial Transactions, Speidel, Summer, White (1969)
- Cases and Materials on Corporations, Cary (4th Ed.)
- Criminal Law and its Processes, Kadish and Paulsen (2nd Ed.)
- Cases and Materials on Torts, Gregory and Kalnen (1959)
- Statutes in Court, Hurst (1970)
- West Northwest Reporter (advance sheet, April 8, 1980)
- Recent Developments in Federal Income Taxes, Schwartz (1978)
- Introduction to UCC (1974)

5. Probation Officer's Office

(Uses the central library)

6. Clerk's Office

(Has no resources other than materials received at NAICJA training sessions.)

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LIBRARY
STANDARDS FOR INDIAN COURTS

Prepared by
The National Center for State Courts
1982

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.

Acessibility 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 Felix 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.

CHAPTER 4: Personnel Manual

RECOMMENDATION 10

THE MENOMINEE COURT NEEDS A PERSONNEL RECORDS SYSTEM DEVELOPED AND IMPLEMENTED.

Requests for job descriptions at the Menominee court revealed that few personnel records are kept at the court. Court personnel are tribal employees and complete personnel files are kept at tribal government offices. The Chief Justice of the Supreme Court currently has primary responsibility over court operation and staff. The maintenance of court personnel files is crucial to a court personnel system.

The tribal constitution Article XV, § 1 requires all employment and promotions of tribal employees be based on merit and fitness as demonstrated by examinations or other evidence relevant to show competence for the particular employment. Terminations of employment shall be made solely on the basis of incompetence or any other reason which results in failure to perform employment duties satisfactorily. The Chief Justice of the Supreme Court is in the best position to evaluate court personnel and thus should have ready access to court personnel files, so that he can easily insert evidence of merit, fitness or competence for individuals.

It is the Center's recommendation that a system of personnel records be implemented at the court. If the tribal government prefers keeping certain required personnel records at tribal offices, a duplicate set of these records could be kept by the court. Any additional records would be maintained safely in the courts file.

Menominee Indian Tribe of Wisconsin

Personnel Policies & Procedures

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30. Job Descriptions		

Pers 1 PURPOSE OF MANUAL. The purpose of this manual is to introduce to all Managers and Supervisors the benefits, standards, policies and procedures that will govern within the Tribal Governing Body Administration. The manual will also serve as an established set of guidelines for all employees of this administration.

These policies and procedures shall apply to all employees and shall be administered and enforced by all appropriate Tribal Executives and Supervisors designated by the Tribal Governing Body.

Pers 2 RECRUITMENT AND SELECTION. Recruiting efforts for this Administration will be conducted in a manner that will attract an adequate number of candidates for the position being considered.

- (1) The recruiting efforts will be carried out through all appropriate media for a reasonable period of time to assume open opportunity for public employment on the basis of the required abilities and skills.
- (2) All available job openings will be brought to the attention of any permanent qualified employee if the opening offers an opportunity for advancement. All openings for job positions will be posted internally within the office as well as an extensive posting procedure within the Reservation.
- (3) Deadline dates will be given with each job posted and each resume received will have to adhere to the deadline date given for each position.
- (4) All applicants for a position with the Tribal Offices must authorize a background and reference check to include their employment with past and present employers. All such information shall be trusted in a most confidential manner.
- (5) All applicants will be interviewed by the Tribal Personnel Manager, the appropriate Supervisor, and if necessary, a third party designated by the appropriate Program Director.
- (6) All candidates for a position shall be evaluated against the same qualification standards. An equivalent in training and experience may be used in lieu of an educational degree, except in situations where a degree is mandatory for the position.

- (7) Applicants who are not selected for a position shall be sent a letter informing them of their non-selection. These applicants shall remain on file for a period of at least three months.
- (8) Nepotism. Any person who served in a hiring capacity with the Tribal Office may not recommend, screen or select a member of his/her immediate family for employment with the Tribe. Nor shall said person influence or give special consideration for a member of his/her immediate family.
- (9) Tribal members shall be hired if they qualify in accordance with Public Law 93-638, Section 271-44, entitled "Indian Preference," and Section 273-45, entitled "Indian Preference".
- (10) Public Service Employees (CETA PSE). On all PSE employees, the following shall apply as regards nepotism.
 - A. The applicable State and Federal regulations shall apply towards all Public Service Employees.

INDIAN SELF-DETERMINATION

§ 450b. Definitions

For the purposes of this Act, the term—

- (a) "Indian" means a person who is a member of an Indian tribe;
- (b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;
- (c) "Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;
- (d) "Secretary", unless otherwise designated, means the Secretary of the Interior;
- (f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

Pub.L. 93-638, § 4, Jan. 4, 1975, 88 Stat. 2204.

So in original. Section was enacted without a par. (e).

References in Text. This Act, referred to in text, is the Indian Self-Determination and Education Assistance Act, which is Pub.L. 93-638, Jan. 4, 1975, 88 Stat. 2203. For distribution of this Act in the Code, see Short Title note set out under section 450 of this title.

The Alaska Native Claims Settlement Act, referred to in text, is classified to section 1601 et seq. of Title 43, Public Lands. **Legislative History.** For legislative history and purpose of Pub.L. 93-638, see 1974 U.S. Code Cong. and Adm. News, p. 7775.

§ 450e. Wage and labor standards and preference requirements for contracts or grants

(a) All laborers and mechanics employed by contractors of subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931, as amended. With respect to construction, alteration, or repair work to which the Davis-Bacon Act is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950, and section 276c of Title 40.

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934, as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title.

Pub.L. 93-638, § 7, Jan. 4, 1975, 88 Stat. 2205.

MENOMINEE INDIAN TRIBE OF WISCONSIN

PERSONNEL REQUISITION	Assigned To:	Date:
Date Required:	Pay Range:	Location of Work:
Cost Center:	Sec. Supervisor:	

Description of Duties:

Experience and Qualifications Required - Indicate Special Requirement
e.g. Security Clearance, Citizenship, etc.

Requested By:	Date:	Approved By:	Date:
---------------	-------	--------------	-------

REQUEST FOR VACANCY ANNOUNCEMENT

Title of Position:

Location of Position:

Description of Duties:

Qualification (Skills, Education, Work Experience):

Organizational Position:

Detailed Description of Major Duties (or attach job description):

Salary Range and Proposed Starting Salary:

<u>Employment Status:</u>	Full Time Permanent	_____	Full Time Temporary	_____
	Part Time Permanent	_____	Part Time Temporary	_____

Proposed Date of Employment:

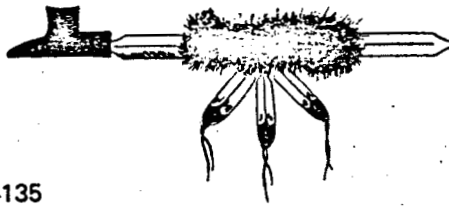
Applications to be Sent to:

Announcement to be Placed In:

Source of Funding:

7/15/82

Menominee Indian Tribe of Wisconsin



P.O. Box 397
Keshena, Wisconsin 54135

Telephone
1-715-799-3341

SYSTEMS PROGRAMMER

September 1, 1982

Position Description: The Systems Programmer is responsible to the Financial Director and has the responsibility for the development of a ~~sound~~ Accounting System. Specifically, he/she is responsible for the following:

- * Analyse current system, developes process for completion of the system.
- * Confers with personnel of organizations units involved to ascertain specific output requirements.
- * Study existing data handling systems to evaluate effectiveness and develop new systems to improve production or workflow.
- * Conducts special studies pertaining to development of new information systems to meet current and project needs.
- * Plans and prepares technical reports and instructional manuals relative to operational systems.
- * Assist in Educational process of operators and related personnel when necessary.

QUALIFICATIONS:

Applicant should have a muninum of three years experience on an I.B.M. System 34. He/she must be thoroughly acquainted with Accounting Principles and have experience on accounting also includes on-line applications.

CONTACT: Menominee Indian Tribe of Wisconsin
Personnel Department
P.O BOX 397
Keshena WI. 54135 or Call 715-799-3495

Deadline Date To Apply:

September 13, 1982 at 4:30 P.M.

FORMER EMPLOYERS (LIST BELOW LAST FOUR EMPLOYERS, STARTING WITH LAST ONE FIRST).

DATE MONTH AND YEAR	NAME AND ADDRESS OF EMPLOYER	SALARY	POSITION	REASON FOR LEAVING
FROM				
TO				
FROM				
TO				
FROM				
TO				
FROM				
TO				

REFERENCES: GIVE THE NAMES OF THREE PERSONS NOT RELATED TO YOU, WHOM YOU HAVE KNOWN AT LEAST ONE YEAR.

	NAME	ADDRESS	BUSINESS	YEARS ACQUAINTED
1				
2				
3				

PHYSICAL RECORD:DO YOU HAVE ANY PHYSICAL LIMITATIONS THAT PRECLUDE YOU FROM PERFORMING ANY WORK FOR WHICH YOU ARE BEING CONSIDERED? ☐ Yes ☐ No

PLEASE DESCRIBE:

IN CASE OF
EMERGENCY NOTIFY

NAME

ADDRESS

PHONE NO.

"I CERTIFY THAT THE FACTS CONTAINED IN THIS APPLICATION ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND UNDERSTAND THAT, IF EMPLOYED, FALSIFIED STATEMENTS ON THIS APPLICATION SHALL BE GROUNDS FOR DISMISSAL.

I AUTHORIZE INVESTIGATION OF ALL STATEMENTS CONTAINED HEREIN AND THE REFERENCES LISTED ABOVE TO GIVE YOU ANY AND ALL INFORMATION CONCERNING MY PREVIOUS EMPLOYMENT AND ANY PERTINENT INFORMATION THEY MAY HAVE, PERSONAL OR OTHERWISE, AND RELEASE ALL PARTIES FROM ALL LIABILITY FOR ANY DAMAGE THAT MAY RESULT FROM FURNISHING SAME TO YOU.

I UNDERSTAND AND AGREE THAT, IF HIRED, MY EMPLOYMENT IS FOR NO DEFINITE PERIOD AND MAY, REGARDLESS OF THE DATE OF PAYMENT OF MY WAGES AND SALARY, BE TERMINATED AT ANY TIME WITHOUT ANY PRIOR NOTICE."

DATE

SIGNATURE

DO NOT WRITE BELOW THIS LINE

INTERVIEWED BY

DATE

HIRED: ☐ Yes ☐ No

POSITION

DEPT.

SALARY/WAGE

DATE REPORTING TO WORK

APPROVED: 1.

2.

3.

EMPLOYMENT MANAGER

DEPT. HEAD

GENERAL MANAGER

This form has been designed to strictly comply with State and Federal fair employment practice laws prohibiting employment discrimination. This Application for Employment Form is sold for general use throughout the United States. TOPS assumes no responsibility for the inclusion in said form of any questions which, when asked by the Employer of the Job Applicant, may violate State and/or Federal Law.

FORMER EMPLOYERS (LIST BELOW LAST FOUR EMPLOYERS, STARTING WITH LAST ONE FIRST).

DATE MONTH AND YEAR	NAME AND ADDRESS OF EMPLOYER	SALARY	POSITION	REASON FOR LEAVING
FROM				
TO				
FROM				
TO				
FROM				
TO				
FROM				
TO				

REFERENCES: GIVE THE NAMES OF THREE PERSONS NOT RELATED TO YOU, WHOM YOU HAVE KNOWN AT LEAST ONE YEAR.

NAME	ADDRESS	BUSINESS	YEARS ACQUAINTED
1			
2			
3			

PHYSICAL RECORD:DO YOU HAVE ANY PHYSICAL LIMITATIONS THAT PRECLUDE YOU FROM PERFORMING ANY WORK FOR WHICH YOU ARE BEING CONSIDERED? ☐ Yes ☐ No

PLEASE DESCRIBE:

IN CASE OF
EMERGENCY NOTIFY

NAME

ADDRESS

PHONE NO.

"I CERTIFY THAT THE FACTS CONTAINED IN THIS APPLICATION ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND UNDERSTAND THAT, IF EMPLOYED, FALSIFIED STATEMENTS ON THIS APPLICATION SHALL BE GROUNDS FOR DISMISSAL. I AUTHORIZE INVESTIGATION OF ALL STATEMENTS CONTAINED HEREIN AND THE REFERENCES LISTED ABOVE TO GIVE YOU ANY AND ALL INFORMATION CONCERNING MY PREVIOUS EMPLOYMENT AND ANY PERTINENT INFORMATION THEY MAY HAVE, PERSONAL OR OTHERWISE, AND RELEASE ALL PARTIES FROM ALL LIABILITY FOR ANY DAMAGE THAT MAY RESULT FROM FURNISHING SAME TO YOU.

I UNDERSTAND AND AGREE THAT, IF HIRED, MY EMPLOYMENT IS FOR NO DEFINITE PERIOD AND MAY, REGARDLESS OF THE DATE OF PAYMENT OF MY WAGES AND SALARY, BE TERMINATED AT ANY TIME WITHOUT ANY PRIOR NOTICE."

DATE

SIGNATURE

DO NOT WRITE BELOW THIS LINE

INTERVIEWED BY

DATE

HIRED: ☐ Yes ☐ No

POSITION

DEPT.

SALARY/WAGE

DATE REPORTING TO WORK

APPROVED: 1.

2.

3.

EMPLOYMENT MANAGER

DEPT. HEAD

GENERAL MANAGER

This form has been designed to strictly comply with State and Federal fair employment practice laws prohibiting employment discrimination. This Application for Employment Form is sold for general use throughout the United States. TOPS assumes no responsibility for the inclusion in said form of any questions which, when asked by the Employer of the Job Applicant, may violate State and/or Federal Law.

LAST NAME →



National Center for State Courts

300 Newport Avenue
Williamsburg, Virginia 23185

APPLICATION FOR EMPLOYMENT SUPPLEMENT

THE INFORMATION REQUESTED IN THE FOLLOWING QUESTIONS WILL NOT AFFECT CONSIDERATION OF YOUR APPLICATION FOR EMPLOYMENT. THE NATIONAL CENTER FOR STATE COURTS IS AN EQUAL OPPORTUNITY, AFFIRMATIVE ACTION EMPLOYER. THE FOLLOWING INFORMATION IS REQUESTED TO ASSIST US IN COMPLYING WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS AND IN PURSUING THE OBJECTIVES OF OUR AFFIRMATIVE ACTION PROGRAM. PROVIDING THIS INFORMATION IS, HOWEVER, NOT MANDATORY.

NAME _____ DATE OF BIRTH _____

ADDRESS _____ SEX _____

TYPE OF POSITION
APPLIED FOR _____

ETHNIC BACKGROUND OR RACE:

_____ WHITE

_____ SPANISH SURNAME

_____ BLACK

_____ AMERICAN INDIAN

_____ ASIAN AMERICAN

_____ OTHER

DO YOU HAVE ANY DISABILITY THAT WOULD PREVENT YOUR PERFORMING THIS JOB? YES _____ NO _____

EXPLAIN:

HOW DID YOU LEARN ABOUT THIS JOB?

SIGNATURE _____ DATE _____

7/15/82

EVALUATION GUIDE

TITLE OF EXAMINATION _____

NAME OF APPLICANT _____

INTERVIEWER _____

RATING FACTORS

COMMENTS

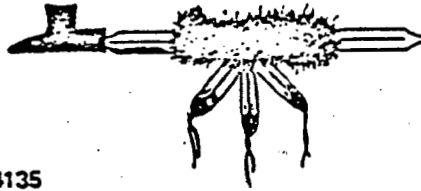
<p>A. <u>Preparation, Knowledge, and Skill</u></p> <ul style="list-style-type: none"> -relevance of work experience -specific duties and personal accomplishments on the job -possession of related or additional skills & knowledges -educational level attained -relevance of coursework -self-development activities such as non-degree courses taken, outside activities, etc. 	
<p>B. <u>Oral Communications Ability</u></p> <ul style="list-style-type: none"> -organization of responses -thoughtfulness of responses -fluency and appropriateness of word usage -confidence and persuasiveness -ability to stick to the topic 	
<p>C. <u>Interest in Job</u></p> <ul style="list-style-type: none"> -knowledge of the job -likes and dislikes of previous job duties -career pattern 	
<p>D. <u>Personal Characteristics</u></p> <ul style="list-style-type: none"> -maturity -sincerity -energy and drive -originality and creativity leadership ability -flexibility and tolerance -emotional stability -other specific personality traits desirable for success in this job 	

PAGE 2

1. List the qualities or traits of the candidate which you feel are appropriate for this job.

2. List what you feel are the main shortcomings of the candidate for this job.

Menominee Indian Tribe of Wisconsin



P.O. Box 397
Keshena, Wisconsin 54135

Telephone
1-715-799-3341

Dear

RE:

This letter is to inform you that you were not selected for the above position you applied for with the Menominee Indian Tribe. We will however, keep your application in our active files for future employment opportunities.

If you do see a job opening that interests you, please feel free to contact the Personnel Office so that we can give your application consideration.

Thank you for your interest in being of service to the Menominee Indian Tribe.

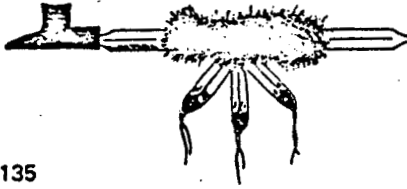
Sincerely,

MENOMINEE INDIAN TRIBE OF WISCONSIN

DW/kcw

C File, Personnel

Menominee Indian Tribe of Wisconsin



P.O. Box 397
Keshena, Wisconsin 54135

Telephone
1-715-799-3341

June 15, 1982

Dear Alan:

This will confirm my conversation of yesterday indicating that the P.Y.D.D. interviewing committee is interested in hiring you for the position Business Manager/Developer.

As we discussed, the starting salary for the position is \$16,500 per annum. Also, the starting date will be Monday, June 21, 1982. Please report to my Office on the day for the necessary paper processing.

Alan, on behalf of the Menominee Indian Tribe, I welcome you aboard as the new manager of the P.Y.D.D. Program. We are looking forward to your arrival in the Land of Menominees.

Sincerely,

MENOMINEE INDIAN TRIBE OF WISCONSIN

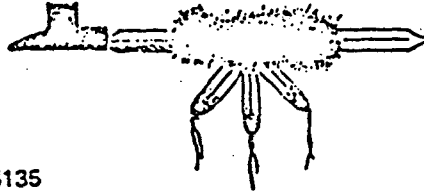
Bernard J. Kaquatoosh
Bernard J. Kaquatoosh, Manager
Personnel Department
Tribal Office Building

BJK/yms

c Sara Fowler
Jim Reiter
Rose Hoffman
Keith Tourtillott
Duane Waukau
file

Enclosure

Menominee Indian Tribe of Wisconsin



P.O. Box 397
Keshena, Wisconsin 54135

Telephone
1-715-799-3341

TAX EXEMPT STATUS

The following is provided for your information and signature.

If you are an enrolled Indian, employed on an Indian Reservation and have established residency on a reservation you are exempt from State Payroll Withholding Taxes. If you are Indian and not a resident of the Reservation and are claiming Tax Exemption you are subject to the following:

MISDEMEANOR

Fine of \$500.00 or imprisonment not to exceed 6 months in jail or both.

FELONY

Fine of \$10,000.00 or imprisonment not to exceed 5 years in jail or both.

I am an Enrolled Indian residing on an Indian Reservation and claim Tax Exemption from State Payroll Withholding Taxes.

SIGNATURE

DATE

Form **W-4**
(Rev. October 1979)

Department of the Treasury — Internal Revenue Service

Employee's Withholding Allowance Certificate

Print your
full name

Your social
security number

Address
(including ZIP code)

Marital status: ☐ Single ☐ Married ☐ Married, but withhold at higher Single rate
Note: If married, but legally separated, or spouse is a nonresident alien, check the single block.

- 1 Total number of allowances you are claiming (from line F of the worksheet on page 2)
- 2 Additional amount, if any, you want deducted from each pay (if your employer agrees) \$
- 3 I claim exemption from withholding because (see instructions and check boxes below that apply):
- a ☐ Last year I did not owe any Federal income tax and had a right to a full refund of ALL income tax withheld, AND,
- b ☐ This year I do not expect to owe any Federal income tax and expect to have a right to a full refund of ALL income tax withheld. If both a and b apply, enter "EXEMPT" here
- c If you entered "EXEMPT" on line 3b, are you a full-time student? ☐ Yes ☐ No

Under the penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate, or if claiming exemptions from withholding, that I am entitled to claim the exempt status.

Employee's signature

Date 19

Employer's name and address (including ZIP code) (FOR EMPLOYER'S USE ONLY)

Employer identification number

▲ Give the top part of this form to your employer; keep the lower part for your records and information ▲

Purpose

The law requires that you complete Form W-4 so that your employer can withhold Federal income tax from your pay. Your Form W-4 will remain in effect until you change it, or, if you entered "EXEMPT" on line 3b above, until April 30 of next year. By claiming the number of withholding allowances you are entitled to, you can fit the amount of tax withheld from your wages to your estimated tax liability.

Introduction

If you got a large refund last year, you may be having too much tax withheld. If so, you may want to increase the number of your allowances by claiming any other allowances you are entitled to on line 1 of Form W-4. The kinds of allowances, and how to figure them, are explained in detail in the line-by-line instructions below.

If you owed a large amount of tax last year, you may not be having enough tax withheld. If so, you can claim fewer allowances on line 1, or ask that an additional amount be withheld on line 2, or both.

If the number of withholding allowances that you are entitled to decreases, you must file a new Form W-4 with your employer within 10 days from the date of the change.

If you qualify, you can claim exemption from withholding on line 3b of Form W-4.

The line-by-line instructions below explain how to fill in Form W-4. Publication 505, Tax Withholding and Estimated Tax, contains more information on withholding. You can get it from any Internal Revenue Service office.

For more information about who qualifies as your dependent, what deductions you can take, and what tax credits you qualify for, see the Form 1040 instructions or call any Internal Revenue Service office.

Line-By-Line Instructions

Fill in the identifying information at the top of the form. If you are married and want tax withheld at the regular rate for married persons, check the "Married" box. If you are married and want tax withheld at the higher Single rate (because both you and your spouse work, for example), check the box "Married, but withhold at higher Single rate."

Line 1 of Form W-4

Total number of allowances.—Use the Worksheet on page 2 to figure all of your allowances. Each kind of allowance you may claim is explained below and is identified by the letter that corresponds to the line for that allowance on the Worksheet.

A. Personal allowances.—You can claim the following personal allowances:

- 1 for yourself,
- 1 if you are 65 or older, and
- 1 if you are blind.

If you are married and your spouse either does not work or is not claiming his or her allowances on a separate Form W-4, you may also claim the following allowances:

- 1 for your spouse,
- 1 if your spouse is 65 or older, and
- 1 if your spouse is blind.

If you are single and hold more than one job, you may not claim the same allowances with more than one employer at the same time. If you are married and both you and your spouse are employed, you may not both claim the same allowances with both of your employers at the same time.

Enter your total personal allowances on line A of the Worksheet.

Note: To have the highest amount of tax withheld, claim "0" personal allowances on line 1.

B. Special withholding allowance.

You can claim the special withholding allowance only if you are single and have one job or you are married, have one job, and your spouse does not work.

If you can claim the special withholding allowance, enter "1" on line B of the Worksheet.

Note: Use the special withholding allowance only to figure your withholding tax. Do not claim it when you file your tax return.

C. Allowances for dependents.—You may claim one allowance for each dependent you will be able to claim on your Federal income tax return. Enter on line C of the Worksheet the total number of allowances you can claim for dependents.

D. Allowances for estimated tax credits.—If you expect to be able to take the earned income credit, credit for child and dependent care expenses, credit for the elderly, or residential energy credit, these credits may lower your tax. To avoid having too much withheld, you may claim extra allowances for these tax credits on line D of the Worksheet.

To enter the proper figure on line D of the Worksheet, you will have to use the "Tax Credit Table for Figuring Your Withholding Allowances" on the top of page 2.

Note: Do not claim allowances for your earned income credit if you are receiving advance payment of it.

E. Allowances for estimated itemized deductions and alimony.—If you expect to itemize your deductions or pay alimony during the year (or both), you may want to claim additional withholding allowances so you will have less tax withheld.

See Schedule A (Form 1040) to find out what deductions you can take and to estimate the amount of your deductions.

Note: If you are paying alimony but will not itemize deductions, enter your estimate of alimony payments for the year on lines E1 and E3 (enter "0" on line E2). Divide the amount on line E3 by \$1,000, and enter the result on line E4 of the Worksheet. Round-off any fraction to the nearest whole number.

Line 2 of Form W-4

Additional amount, if any, you want deducted from each pay.—If you are not having enough tax withheld from your pay, you may ask your employer to withhold more by filling in an additional amount on line 2.

Often, married couples, both of whom are working, and single persons with two or more jobs, will need to have additional tax withheld.

Estimate the amount by which you will be underwithheld and divide that amount by the number of pay periods in the year. Enter the additional amount you want withheld each pay period on line 2.

Line 3 of Form W-4

Exemption from withholding.—You can claim exemption from withholding only if last year you did not owe any Federal income tax and had a right to a refund of all income tax withheld, and this year you do not expect to owe any Federal income tax and expect to have a right to a refund of all income tax withheld.

If you qualify check boxes 3a and b, write "EXEMPT" on line 3b and answer Yes or No to the question on line 3c.

If you want to claim exemption from withholding next year, you must file a new Form W-4 with your employer on or before April 30 of next year. If you are not having Federal income tax withheld this year, but expect to have a tax liability next year, the law requires you to give your employer a new Form W-4 by December 1.

If you are covered by the Federal Insurance Contributions Act, your employer must withhold social security tax from your pay.

EMPLOYMENT RECORD

CARD NO. _____

NAME _____

DATE _____

ADDRESS _____

S. S. NO. _____

PHONE _____

AT HOME
NEIGHBORS

BIRTH DATE _____

SEX _____

SINGLE
MARRIED

ALIEN
CITIZEN

EXEMPTIONS _____

IN EMERGENCY NOTIFY _____

PREVIOUS EMPLOYERS	TYPE OF WORK	DATES	REASON FOR LEAVING

REMARKS _____

DATE HIRED _____

POSITION _____

RATE _____

WORKING PAPERS _____

BIRTH CERTIFICATE _____

DATE LEFT _____

REASON _____

M. F. & S. CO., INC. - BOX 2171 - DURHAM, N. C.

Page 2

Tax Credit Table for Figuring Your Withholding Allowances—See Example Below

Allowances	0	1	2	3	4	5	6
Estimated salaries and wages from all sources:	If the amount of estimated tax credits is:						
	Under	At least	But less than	At least	But less than	At least	But less than
Part I Single Employees							
Under \$5,000	No additional allowances						
5,000-15,000	250	250	500	500	700	700	900
15,001-25,000	350	350	700	700	1,000	1,000	1,000 or more
25,001-35,000	550	550	950	950	1,000	1,000	1,000 or more
Part II Head of Household Employees							
Under \$5,000	No additional allowances						
5,000-20,000	150	150	400	400	650	650	900
20,001-35,000	250	250	500	500	700	700	950
35,001-45,000	450	450	850	850	1,000	1,000	1,000 or more
Part III Married Employees (When Spouse is Not Employed)							
Under \$8,000	No additional allowances						
8,000-15,000	200	200	350	350	500	500	700
15,001-25,000	250	250	500	500	700	700	900
25,001-35,000	300	300	650	650	950	950	1,000
35,001-45,000	650	650	1,050	1,050	1,050	1,050	1,050 or more
Part IV Married Employees (When Both Spouses are Employed)							
Under \$8,000	No additional allowances						
8,000-15,000	250	250	400	400	450	450	500
15,001-25,000	550	550	800	800	950	950	1,000

Example: A taxpayer who expects to file a Federal income tax return as a single person estimates annual wages of \$12,000 and tax credits of \$650. The taxpayer uses Part I for single employees. The \$12,000 falls in the wage bracket of \$5,000 to \$15,000 in the left column. Reading in the shaded area to the right, \$650 falls within the estimated tax credits bracket of At least 500 But less than 700. Looking to the top of the column, the taxpayer finds that 2 allowances are permitted. The taxpayer enters "2" on line D of the Worksheet below.

Worksheet to Figure Your Withholding Allowances to be Entered on Line 1 of Form W-4

(Letters on this worksheet are keyed to the letters in the line-by-line instructions on page 1)

A	Personal allowances	1	
B	Special withholding allowance (not to exceed 1 allowance—see instructions on page 1)	2	
C	Allowances for dependents	3	
D	Allowances for estimated tax credits (from Tax Credit Table for Figuring Your Withholding Allowances, above):	4	
	1 Find your filing status under Part I, II, III, or IV of the table.		
	2 Under your filing status, find your estimated salaries and wages in the left column.		
	3 Read the shaded amounts across to the right until you get to the amount of your estimated tax credits.		
	4 At the top of that column is the number of allowances you may take for your estimated tax credits. Enter the number of allowances.		
E	Allowances for estimated itemized deductions and alimony:		
	1 Enter the amount of your estimated itemized deductions, including alimony payments, for the year.	1	\$
	2 Find your total estimated salaries and wages amount in the left column of the table below. Read across to the right and enter the amount from the column that applies to you. Enter that amount here (if claiming only alimony payments on line E1, enter "0" on line E2).	2	\$
	Estimated salaries and wages from all sources:		
	Under \$10,000	Single Employees (only one job)	Married Employees (one spouse working and one job only)
	10,000-30,000	2,800	3,900
	30,001-40,000	3,500	3,900
	Over \$40,000	15% of estimated salaries and wages	13% of estimated salaries and wages
	3 Subtract line E2 from line E1.	3	\$
	4 Divide the amount on line E3 by \$1,000 (round-off fractions to the nearest whole number). Enter here.	4	
F	Total (add lines A through E). Enter total here and on line 1 of Form W-4.		

Privacy Act of 1974

The Internal Revenue Code requires employers to fill out and give their employees a signed withholding allowance certificate that shows the number of withholding allowances an employee claims (section 3402(f)(2)(A); and its regulations). You are also required to give your social security number for proper identification and processing (section 6109 and its regulations).

If you do not fill out a withholding allowance certificate, you will be treated as a single person who claims no withholding allowances (sections 3402(f) and 3401(e)). The main use of this information is to carry out the Internal Revenue laws of the United States. Routine uses of the information include giving it to the Department of Justice if they need it in connection with civil or criminal litigation, and to the States and District of Columbia for use in administering their tax laws.

At the time this form was printed, regulations were proposed which would require employers to send the IRS copies of certain Forms W-4.

COURT PERSONNEL FILE

Beginning with notice of employment, the court should begin a personnel file on each person; keeping the following items:

- Application for Employment
- Interview Evaluation (?)
- Letter confirming hiring stating starting date, pay range, and position hired for
- Orientation Checklist
- Form beginning with job title division, supervisor, wage range, etc.
- Employee Appraisal
- Salary Increase Data
- Employee Leave Record
- Letter of Resignation
- Termination Checklist

3 DEFINITIONS. For the purpose of this Personnel Manual, the following definitions shall be used throughout the entire manual.

- (1) Personnel Manual. This is the official manual which is given to every Manager or Supervisor of this Administration. It covers in detail the Personnel Policies and Procedures of this Administration.
- (2) Employee's Guide. This is the official manual which is given to every new employee of this Administration. It will introduce to the employee the standards, policies, procedures, and guidelines that are part of this Administration.
- (3) Administration. This term refers to the Tribal Governing Body and its employees.
- (4) Employee. Any person who is in the employment of this Administration and who is not so employed as a direct result of an election process.
- (5) Immediate Family. This term shall include the parents, grandparents, foster parents, children, grandchildren, foster children, brothers (and their spouse), sisters (and their spouse) of the person or spouse, and the aunts and uncles of the person or spouse. This term shall also include son-in-law, daughter-in-law, father-in-law, mother-in-law, sister-in-law, brother-in-law, or the nieces and nephews.
- (6) Probationary Employee. This is any new or re-hired employee who has to complete six (6) months of continuous service.
- (7) Disciplinary Action. This can mean a written reprimand, a suspension from duty, or a discharge from employment.
- (8) Tribal Executive. The Chairperson of the Tribal Governing Body or any other elected or appointed officer of the Tribal Governing Body.
- (9) Tribal Governing Body. Those person elected or appointed to govern the Administration.

4 CLASSIFICATION OF EMPLOYEES. For the purpose of this manual, the following classifications will apply.

- (1) Salaried Employee. This is a professional or supervisory position. Employees in this category are compensated on an annual salary basis and are paid every two weeks.
- (2) Hourly Employee. These employees are not considered professional or supervisory positions. They are compensated on the basis of actual hours worked in a given pay period.
- (3) Permanent Full Time Employee. Employees who have completed their probationary period and their job positions are considered to be permanent.
- (4) Permanent Part Time Employee. Any employee who works less hours than the regular scheduled work week.
- (5) Temporary Full Time Employee. Any employee who works a full schedule work week, but whose term of employment is for a definite period of time.
- (6) Temporary Part Time Employee. Any employee who works less hours than the regular scheduled work week, but whose term of employment is for a definite period of time.
- (7) Consultants. Persons who are in the employment of the Tribe for a specific period of time and provide their knowledge and experience in a given field. Any permanent or temporary employee shall not be considered for consultation services until the Personnel Committee can separate their duties to the satisfaction of the Personnel Department and Personnel Committee. There shall be no duplication of salary.
- (8) Public Service Employees (CETA). Persons who are in the employment of the Tribe for a limited period of time which is indicated by the grant or funding period.

5 NEW EMPLOYEE ORIENTATION. All new employees shall be given an orientation session by the Administrator's Personnel Department. An orientation session shall cover the various facets of the Administration as well as the following information:

- (1) The Personnel Department shall be responsible for communicating the following information to every new employee:
 - a. Explain the purpose of the respective work area or program to include their objectives.
 - b. Describe the organizational chart, explain how each department inter-relates with each other.
 - c. Inform the new employee of the Standards of Conduct which are expected of all employees.
 - d. Explain the work rules and regulations.
 - e. Inform the new employee of the probationary period and the performance evaluation they should expect.
 - f. Detail the Employee Benefit Program, to include Life, Health, Accident and Sickness Program.
- (2) The Personnel Department shall also provide a copy of the Employees Guide to all new employees.
- (3) The respective supervisor shall discuss the position in detail with the new employee. Certain objectives and goals should be established at this time so the employee knows what has to be accomplished during the probationary period.
- (4) Public Service Employee (CETA PSE). The staff department within CETA shall have the responsibility for proper orientation of all Public Service Employees.

ORIENTATION CHECKLIST

Initials: _____

Date: _____

- _____ 1. Issued copy of Employee Manual.
 - a. Union Contract included.
- _____ 2. Job title and review of job standards.
 - a. Outline of job duties.
 - b. Where work originates.
 - c. Next work stage.
 - d. Relation of job with other tasks in office and department.
- _____ 3. Outline of work schedule.
 - a. Starting and quitting times.
 - b. Lunch hour - when.
 - c. Rest periods - when, how long.
 - d. Work hours per day, per week.
 - e. Overtime - required authorization by supervisor.
- _____ 4. Explanation of probationary policy.
- _____ 5. Review of wages.
 - a. Amount per pay period and annual total.
 - b. Pay dates.
 - c. Paycheck deductions required by law.
- _____ 6. Explanation of salary review practices.
 - a. Merit raises.
- _____ 7. Explanation Of opportunities for advancement on the job and through promotion; illustration.
- _____ 8. Discussion of attendance requirements and record of attendance.
 - a. How to fill out a time sheet.
 - b. Necessity of regular attendance and punctuality, influences they bear on employee's record and progress.
 - c. Explanation of absence and tardy policies; who to contact and by what time.
- _____ 9. Explanation of vacation leave, sick leave, holidays.
- _____ 10. Explanation of the importance of immediately reporting accidents or injuries incurred on the job; insurance protection; Workman's Compensation requirements.
- _____ 11. Brief explanation of the retirement plan as a long range benefit.
- _____ 12. Discussion of Credit Union functions and services.
- _____ 13. Tour of the Court; explanation of court functions, department functions, and inter-department relations.
- _____ 14. Opportunity to talk about job and ask questions, allowing employee to give conversation direction.

- _____ 15. Discussion of job problem areas; review of duties, responsibilities and the importance thereof; clarification of any misunderstandings; opportunity for employee to vent initial impressions.
- _____ 16. Review of employee's work performance.
- _____ 17. New Employee Progress Report.
 - a. Discussion of work performance, progress, and employee adjustment.
 - b. Discussion of evaluation, interview, and employee discussion with his/her department head.

Initials: _____

Date: _____

Job Title _____
 Division _____
 Immediate Supervisor _____
 Wage Range _____
 First Payday _____
 Starting Date of Insurance Coverage _____
 End of Probation Period _____
 Eligibility for Pension _____
 Your Union Steward _____
 Name of People in Department _____

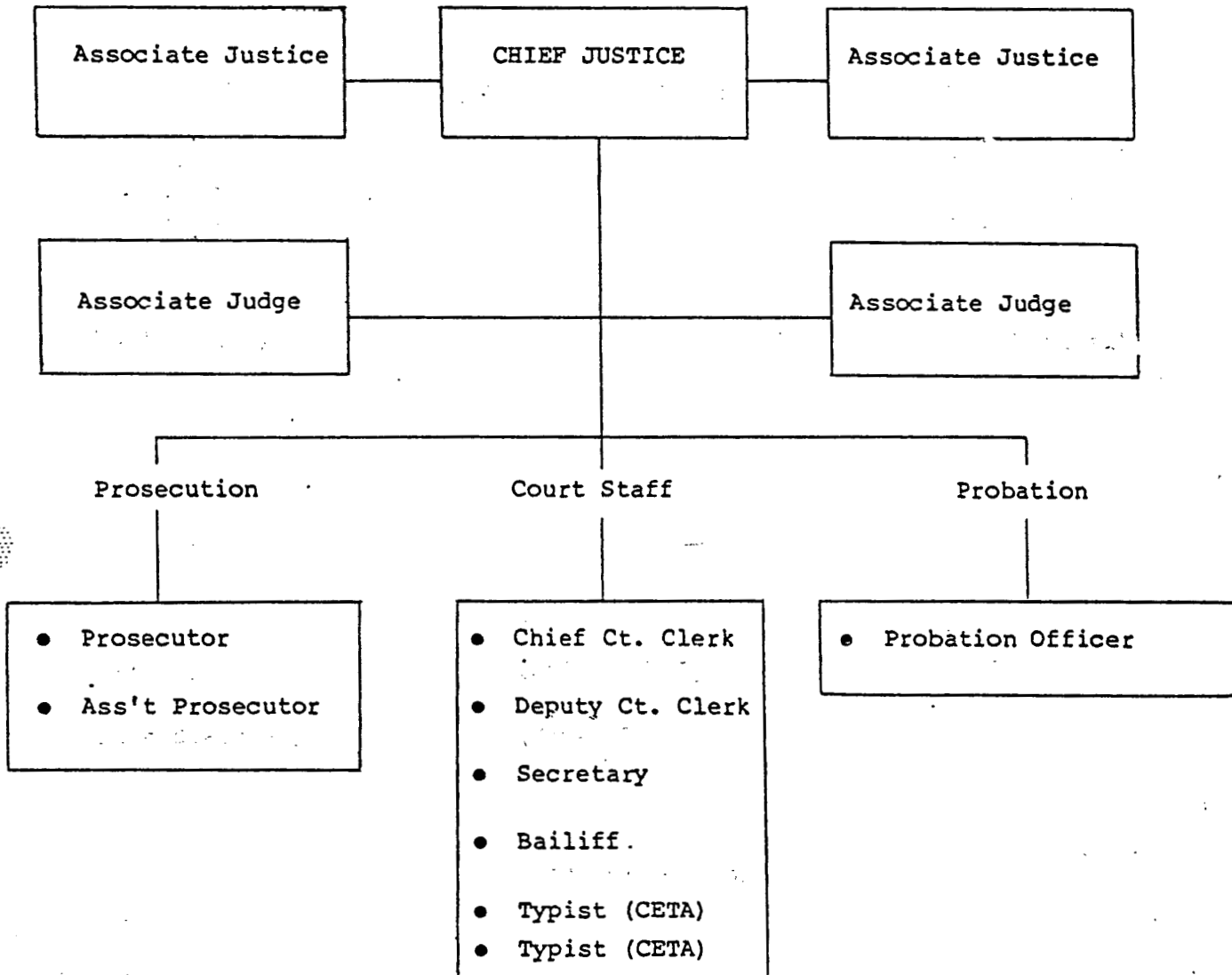
Who to call for questions regarding:

Wages, Sick Leave,
 Insurance, MEA Kathy Rock (456) 3362
 Credit Union..... (456) 3664
 Pension..... Administrator's Office (456) 3278
 Union Activities..... Cal Feyen (456) 3378

COURT DIVISIONS

Administration..... (456) 3278
 Assignment Clerk/Magistrate..... (456) 3886
 Bailiff's Office..... (456) 3109
 Civil..... (456) 3091
 Real Estate/Small Claims..... (456) 3892
 Criminal..... (456) 3370
 Pre-trial Services..... (456) 3131
 Traffic Bureau..... (456) 3340
 Probation..... (456) 3080
 Pre-sentence..... (456) 3376

MENOMINEE COURT ORGANIZATION*



* The tribal council has licensed five (5) individuals to act as lay advocates (including Luke Beaupray, Wesley Martin, and Mr. Chevalier).

I. MENOMINEE JUDICIAL SYSTEM

The Menominee tribal code authorizes and provides for a lower court and supreme court system for reservation tribal members. The courts are currently exercising jurisdiction over all reservation residents "subject to any contrary provisions exceptions or limitations contained in either federal law, the Tribal Constitution, or as expressly stated elsewhere in the law and order code".¹ Jurisdiction over Indian and non-Indian parties is summarized in Chart 1 below.

CHART 1		
	<u>Criminal Jurisdiction</u>	<u>Civil Jurisdiction</u>
• Indian Plaintiff	Yes	Yes
• Indian Defendant	Yes	Yes
• Non-Indian Defendant	No (conflicting federal law)	Yes, if minimum contacts with the reservation
• Non-Indian Plaintiff	Yes, may file criminal complaint	may file civil complaint if minimum contacts with reservation

The Menominee Judicial System presently operates under a code adopted by the tribal council.² Both courts utilize the same staff which consists of a chief court clerk, two deputy

¹ Tribal Judiciary and Interim Law and Order Code § 1-7-2(2).

² The court was a CFR court up until 1976.

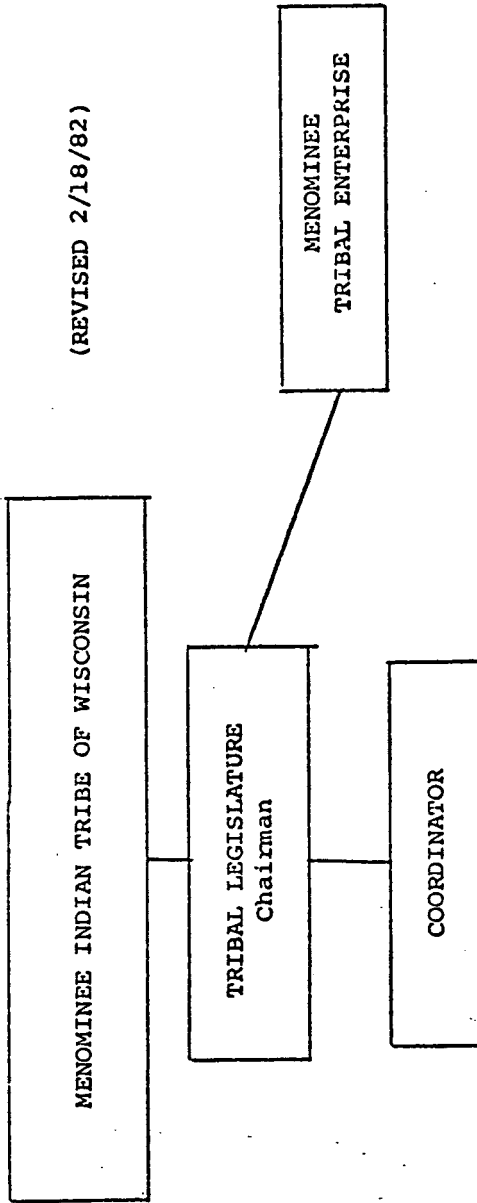
clerks, probation officer, bailiff, prosecutor, and (part-time) assistant prosecutor. The court staff are tribal employees and all revenues collected by the court are deposited in a tribal court fund.

The code also authorizes "such (trial) judges as the tribal legislature may determine for Tribal courts." (Explanation provided) Currently, two positions are authorized for the trial court, both of which were recently filled by tribal council appointment. These trial judges are appointed for two year terms and can be removed only for cause by the tribal Legislature during their term.

Tribal code § 1-2-2(1)(a) also authorizes an appellate court system called the Supreme Court, composed of a chief justice and two associates justices who are appointed by the tribal council for four year terms. They may not be removed during their term except for cause. Presently, the chief justice and only one associate justice position are filled. Supreme court justices also hear trials as tribal court judges when necessary. In such cases judges are brought in from other reservations to hear any resulting appeals.

TRIBAL GOVERNMENT PLAN

(REVISED 2/18/82)



5 PERSON Committee	5 PERSON Committee	5 PERSON Committee	5 PERSON Committee	3 PERSON Committee	5 PERSON Committee	5 PERSON Committee	5 PERSON Committee	
EDUCATION & SOC. SERVICES	HEALTH	NATURAL RE- SOURCES & LAND	MANAGEMENT, PERSONNEL & GRIEVANCE	CODES & ORDINANCES	LEGISLATIVE	BUSINESS ASSETS	HOUSING & MANPOWER	LAW & ORDER
SUB- COMMITTEE		SUB- COMMITTEE				SUB- COMMITTEE		
Tribal Education		Tribal Planning				Menominee Loan Fund		
		Mining Impacts, Forestry & Roads						

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.

Bail: 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.

Bailee: 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.

Erie 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.

Malefeasance: 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.

Venireman: 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.

Volr 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.

STANDARD ABBREVIATIONS

Advisement - ADVISMNT
Affidavit - AFDVT
After - AFT
Against - AGST
Amend - AMND
Amount - AMNT
Appeal - APL
Appear - APR
Appointed - APPTD
Arraignment - ARRAIGN
Assault - ASSLT
Assigned - ASGD
Attorney - ATTY

Before - BEF
Bench - BNCH
Bench Warrant- B W
Building - BLDG

Certificate/
Certify - CRT
City Witness- CTY WIT
Changed - CHGD
Charge - CHRG
Commit/
Committed - COMM
Complainant - COMP
Consent - CNST
Continue - CONT
Cost - CST
Court - CRT

Damage = - DMG
Default - DFLT
Defendant - DEF
Delinquency - DELINQ
Destroy/
Destruction - DEST
Discovery - DISCVRY
Dismissed - DSMSD
Disorderly - DISO
Disposition - DISO
Disposition - DISP
Diversion - DVERSN

Examination - EXAM
Extended - EXTND

Fail to Appear - FTA
False - FLS
Found - FND

Garnishment - GARNISH
Government - GOV
Guilty - GLTY

Hearing - HRNG

Identification - ID
Information - INFO
Interests - INTRST
Intoxicated - INTOX

Judgment - JDGMNT

Key - KY

License - LIC

Litigation - LITGTN

Malicious - MAL

Motor - MTR

Neglect - NEG

No Contest - NCT

No Cost - NC

Notice - NOTC

Operators - OPS

Order to Show Cause - OTSC

Original - ORIG

Partial - PART

Party - PRTY

Personal - PERS

Plaintiff - PLT

Prejudice - PREJD

Private - PRIV

Probation - PROB

Program - PRGM

Property - FROP

Prosecute - PROSC

Prostitute - PROST

Proven - PRVN

Public - PUB

Railroad	- RR
Received	- REC
Recognizance	- RECOG
Reduced	- RED
Release on own Recog.	- ROR
Request	- REQ

Satisfied	- SATSFD
Sentencing	- SENTCNG
Statement	- STATMNT
Stipulate	- STIP
Summary	- SMRY
Summons	- SMNS

Tax	- TX
Trial	- TRL

Unavailable	- UNAVL
Under	- UNDR

Vehicle	- VEH
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Warrant	- WRNT
Waive	- WAV
With	- W
Withdraw	- WDRW
Without	- WO
Worked	- WRKD

Pers

6 STANDARDS OF CONDUCT. In order to assure that the business of this Administration is conducted effectively, objectively, and without improper influence therefore, all employees must be persons of integrity and observe unquestionable standards of behavior. The following are to be considered in harmony with organizational policy on a code of ethics or standards of conduct for this Administration

- (1) An employee shall not engage in criminal, infamous, dishonest, immoral or notoriously disgraceful conduct, or other conduct that would be detrimental to this Administration.
- (2) An employee must avoid conflicts of his private interests with his work duties and responsibilities. Outside employment may be appropriate when it will not adversely affect the performance of an employee's official duties or will not reflect discredit on this Administration.
- (3) No employee may use confidential information gained in the course of their employment for private gains. All such information shall be kept confidential and released only with specific authority from the respective authority.
- (4) An employee must not be indirectly that which is improper for him to do directly. For example, members of his family may not accomplish for him that which he, himself, may not do.

Pers 7 WORK RULES AND REGULATIONS. Every organization must have rules to achieve their objectives. These rules are defined as those established by this Administration within its discretion to regulate the personal conduct of employees. They are established not to restrict the rights of employees, but rather to define those rights.

- (1) Work Performance. All employees are expected to carry out their assigned tasks in a conscientious manner which is safe for the employee and other employees. This Administration has concern with the nature and effectiveness of the services that are provided to the community.
- (2) Attendance and Punctuality. Employees are expected to be punctual and adhere to the assigned working hours. If they take sick leave, it is imperative that the immediate supervisor be informed of such sick leave. The following actions are considered to be in harmony with Administration policy on attendance and punctuality.
 - a. Report promptly at the starting time of the working day and not leave prior to the quitting time of the working day.
 - b. Proper notice shall be given to the Supervisor or designated authority when unable to report to work as scheduled.
 - c. Observation of the time limits of the lunch period as well as the rest periods.
- (3) Use of Property. Employees are expected to take good care of property and to use it only for Administrative business.
- (4) Personal Appearance. Employees are expected to conduct themselves in a business-like manner, be clean, and appropriately dressed. Personal attire should be consistent with the general accepted standards for the type of work involved.

WHAT TO DO WHEN HURT

IMPORTANT

If hurt while working, tell your supervisor **AT ONCE**, and get first-aid treatment. If necessary you will be sent to a doctor or hospital. Even a sliver or scratch should be reported; infection may set in.

IF YOU DO NOT promptly report any injury you may have to pay your own doctor's bill and may lose your compensation benefit. Notice to your employer of every accident is required by law.

CARRY THIS CARD IN YOUR WALLET

8 PROBATIONARY PERIODS. The probationary period is an integral part of the examination process of each employee. It shall be used to closely observe the work of employees to determine if they can effectively carry out their duties and responsibilities.

(1) Duration. All new employees shall have a probationary period of six (6) months duration except in the following situations:

a. In the case of an understudy or trainee, the probationary period may be lengthened at the discretion of the immediate supervisor.

b. In the case of a severe change in responsibilities or duty assignment, the immediate supervisor may extend the probationary period.

(2) Lateral Movement. A lateral movement is any movement to a permanent position with the same pay rate or a closely related class. The probationary period time served prior to such movement shall be, may be, or shall not be, carried over and applied to the new probationary period as follows.

a. Within an employing unit. Shall be carried over.

b. Between employing units of the same department May be carried over.

c. Between Departments. Shall not be carried over when movement is from a probationary period resulting from an original appointment or promotion.

(3) Probationary Completion. At the end of the probationary period, six (6) months, an employee evaluation must be done by the immediate supervisor. An evaluation can be held sooner than six (6) if the job duration is of a short term nature. For example, if a position will exist for twelve (12) months only, the evaluation and the probationary period can be shortened to compare with the duration of the position.

Pers 9 PERFORMANCE EVALUATION. Every employee of this Administration shall be given an evaluation of their performance after six (6) months on the job. An evaluation should be given to each employee every twelve (12) months thereafter by the immediate supervisor. If a supervisor feels that an evaluation is needed much sooner than the annual evaluation, they may do so at their own discretion. An evaluation given earlier than required doesn't necessarily mean a salary increase if forthcoming. A performance evaluation should be based on the following criteria, but it shall not be limited to the following:

- (1) Ability to perform their duties in an effective and efficient manner that coincides with their job description.
- (2) Ability to work well with their fellow workers and supervisors.
- (3) Receptive to new ideas and the willingness to carry out directions.
- (4) Consistently abides by work rules and regulations.
- (5) Ability to deal with the public in a very courteous and tactful manner.
- (6) Ability to accomplish goals and objectives that were agreed upon in previous performance evaluations.

The Supervisor of a unit or department should keep a record for all their employees. This record should indicate the date of the last performance evaluation, and the date of the next or forthcoming performance evaluation.

Every performance evaluation shall be discussed with the employee. After an evaluation has been discussed, a copy of the evaluation shall be sent to the Personnel Department to be placed in the employee's official personnel file.

Public Service Employee (CETA PSE). Since the CETA employee is of a limited term employment, an evaluation of their performance shall be given to each employee after six months on the job and then every six months thereafter.

R E M I N D E R

TO: _____ DEPT: _____

FROM: PERSONNEL DEPARTMENT

EMPLOYEE'S NAME: _____ DUE DATE: _____

THIS IS A REMINDER TO YOU THAT THE ABOVE EMPLOYEE HAS COMPLETED HIS/HER EVALUATION PERIOD. TO THIS DATE OUR OFFICE HAS NOT RECEIVED THE NECESSARY EVALUATION FORMS. PLEASE NOTE THE DUE DATE OF THIS EMPLOYEE'S EVALUATION.

IF YOU HAVE ANY QUESTIONS, OR NEED ADDITIONAL FORMS, PLEASE FEEL FREE TO CONTACT THE PERSONNEL DEPARTMENT.

THANK YOU,

R E M I N D E R

TO: _____ DEPT: _____

FROM: PERSONNEL DEPARTMENT

EMPLOYEE'S NAME: _____ DUE DATE: _____

THIS IS A REMINDER TO YOU THAT THE ABOVE EMPLOYEE HAS COMPLETED HIS/HER EVALUATION PERIOD. TO THIS DATE OUR OFFICE HAS NOT RECEIVED THE NECESSARY EVALUATION FORMS. PLEASE NOT THE DUE DATE OF THIS EMPLOYEE'S EVALUATION.

IF YOU HAVE ANY QUESTIONS, OR NEED ATTIONAL FORMS, PLEASE FEEL FREE TO CONTACT THE PERSONNEL DEPARTMENT.

THANK YOU,

DATE OF HIRE: _____ DEPT. _____

[illegible]

MENOMINEE INDIAN TRIBE OF WISCONSIN**EMPLOYEE APPRAISAL**

NAME _____ DATE OF APPRAISAL _____

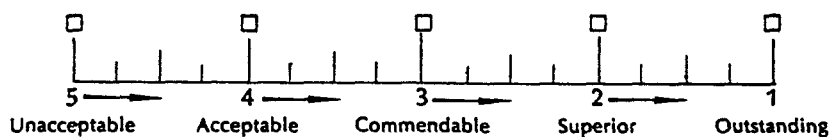
EMPLOYMENT DATE _____ DATE OF LAST APPRAISAL _____

PERFORMANCE

RESULTS (Achieved during the past _____ months. Consider the objectives previously agreed upon and comment on results as compared to objectives. If there were factors which to a significant degree either helped or hindered the employee in achieving the expected results, comment on those here.)

METHODS (How does the employee go about getting the job done? How does the employee work with and through other people? Be specific.)

EVALUATION



OBJECTIVES FOR THE PERIOD TO BE COVERED BY THE NEXT PROGRESS REPORT: (Discuss with the employee what you both expect to be accomplished during the period to be covered by the next progress report. List these goals, objectives, or target areas here. Discuss also your plans for helping accomplish these goals.)

Employee Signature

Date

Supervisor Signature

Date

NATIONAL CENTER FOR STATE COURTS

Administrative Staff
Performance Evaluation Form

Job Title _____

Name of Person
in the Position _____

Evaluator's Name _____

Signature _____

SUMMARY OF EVALUATION AREAS

MAXIMUM
POINT TOTALS

PERFORMANCE
TOTALS

Results

Quality of work	10
Quantity of work	10
Job Knowledge	10
Effectiveness	10
Effort	<u>10</u>

50

Behaviors

Attention to Detail	5
Ability to coordinate diverse activities	10
Ability to communicate	5
Judgment	10
Responsibility - level of . . .	5

35

Personal Attributes

Emotional maturity	5
Cooperativeness	5
Attendance	<u>5</u>

15

TOTAL

100

7/15/82

RESULTS - 50 points

1. Quality of Work - Work product consistently meets standards of acceptability (neat, accurate, complete, thorough). 1. _____
 - Frequent errors; cannot be depended upon to be accurate - 1-2 points
 - Acceptable work if closely supervised - 3-4 points
 - Usually good quality; few errors - 5-6 points
 - Consistently good quality; errors rare - 7-9 points
 - Outstanding quality - 10 points
2. Quantity of Work - Routinely produces an acceptable amount of work in a reasonable amount of time. 2. _____
 - Below average output; slow - 1-2 points
 - Maintains group average volume - 3-4 points
 - Work consistently with average volume - 5-6 points
 - Works consistently with excellent volume - 7-9 points
 - Outstanding volume - 10 points
3. Job Knowledge - Understands departmental requirements and National Center procedures and policies and can act accordingly. 3. _____
 - Little knowledge of job - 1-2 points
 - Knows job reasonably well - 3-4 points
 - Knows job well; occasionally needs help - 5-6 points
 - Knows job thoroughly; rarely needs help - 7-9 points
 - Outstanding knowledge of job - 10 points
4. Effectiveness - Causes and creates desirable results (includes such aspects of job as workflow, record keeping, and communications). The ability to overcome barriers in carrying out assignments. 4. _____
 - Does only what is specifically instructed to do - 1-2 points
 - Usually waits for instructions - 3-4 points
 - Works on own initiative - 5-6 points
 - Quickly grasps situation; goes to work without hesitation - 7-9 points
 - Works independently - 10 points
5. Effort - Aggressiveness, skill in meeting immediate project demands, willingness to work overtime if necessary to meet deadlines. 5. _____
 - Plods along and stretches simple work - 1-2 points
 - Works only specified hours regardless of deadlines - 3-4 points
 - Does own work; may occasionally work extra if given notice - 5-6 points
 - Works efficiently; willing to work extra to meet deadlines - 7-9 points

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Is skillful and efficient with a high demand on time; frequently works overtime - 10 points

BEHAVIOR - 35 points

6. Attention to Detail - Scheduling of meetings, filing, record keeping, proper format for varied correspondence, proof-reading own work. 6. _____

Frequently cannot be depended upon;
frequent errors - 1 point
Occasionally record keeping needs to be checked - 2 points
Keeps good records; few errors - 3 points
Well organized; errors rare - 4 points
Outstanding attention to detail - 5 points

7. Ability to Coordinate Diverse Activities - The ability to answer the telephone, take messages, and answer questions while performing various clerical assignments. The ability to keep abreast of all NC activities and staff members. 7. _____

Performs one task at a time - 1-2 points
Handles a few items - 3-4 points
Takes instructions from several professionals; is organized - 5-7 points
Handles diverse tasks and is very well organized - 8-10 points

8. Communications Ability - The ability to respond to questions, or report information correctly and pleasantly to personnel both within and outside the National Center. 8. _____

Confuses and frequently reports inaccurate information - 1 point
Occasionally reports inaccurate information - 2 points
Seldom reports inaccurate information - 3 points
Transmits accurate information - 4-5 points

9. Judgment - The ability to make accurate decisions and properly analyze situations. 9. _____

Does not exercise satisfactory judgment - 1 point
Frequently needs supervisor's advice in order to make a decision - 3-4 points
Makes some decisions, occasionally asks supervisor's advice - 5-6 points
Exercises good judgment within established boundaries - 7-9 points
Exercises judgment independently; alert for ways of improving assignments and frequently presents recommendations for refinement - 10 points

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10. Responsibility - Level of . . . - The amount of supervision required.

10. _____

- | | |
|---|--------------|
| Requires constant supervision to insure that work is done | - 1 point |
| Requires occasional supervision | - 2 points |
| Requires little supervision | - 3-4 points |
| Works independently | - 5 points |

PERSONAL ATTRIBUTES - 15 points

11. Emotional Maturity - Practical attitudes in dealing with problems; control of emotions in adverse circumstances.

11. _____

- | | |
|--|--------------|
| Refuses to accept criticism | - 1 point |
| Listens to criticism; makes some changes | - 2 points |
| Accepts criticism | - 3-4 points |
| Uses criticism to improve performance | - 5 points |

12. Cooperativeness - The ability to work with a group to see that a work product is completed within deadlines.

12. _____

- | | |
|---|--------------|
| Uncooperative; resents new ideas; displays little cooperation | - 1-2 points |
| Usually cooperates; does not resist new ideas | - 3-4 points |
| Responsive; cooperates well; meets others more than halfway | - 5 points |

13. Attendance - Reliability to be on the job.

13. _____

- | | |
|---|------------|
| Frequent unexplained lateness and/or absences | - 1 point |
| Comes in late with reasonable excuses; fairly frequent explained absences | - 2 points |
| Usually can be relied upon to be at work on time; explained absences occur occasionally | - 3 points |
| Can always be relied upon to be at work on time; absent only when real emergency | - 4 points |
| Outstanding | - 5 points |

Please comment on the overall performance of this staff member. Use additional sheets if necessary.

I have read the contents and received a copy of this evaluation. I am ____ am not ____ attaching a separate statement commenting on it.

Staff Member: _____

Date: _____

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NATIONAL CENTER FOR STATE COURTS
Professional Staff Performance Evaluation Form

Name: _____ Job Title: _____

Date of Hire: _____ Review Date: _____ Office: _____

1. SPECIFIC EVALUATION

When filling out this form, evaluate person in terms of the job as performed and not in comparison to other National Center employees.

	Very Good	Good	Fair	Poor	Very Poor	Insufficient Basis to Comment
Job Knowledge						
Quality of Work						
Quantity of Work						
Management Ability						
Initiative						
Responsibility						
Creativity						
Judgment						
Leadership Ability						
Interpersonal Relations						
Writing Ability						
Speaking Ability						

Overall Performance Rating: _____

NOTE: An explanation must be included on Page 2 for any rating of "Fair," "Poor," or "Very Poor."

2. OVERALL EVALUATION

Please comment on the overall performance of this staff member. Use additional sheets if necessary.

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3. PROBLEM AREAS

Please explain any ratings of "fair," "poor," or "very poor" from the Specific Evaluation on Page 1 or other problem areas not otherwise addressed.

4. IMPROVEMENT

In what areas does this staff member need to improve? What remedial plan is proposed to facilitate this improvement.

5. SUPERVISOR'S SIGNATURE

The information presented above reflects my best judgment and is correct to the best of my knowledge.

Supervisor: _____

Date: _____

6. STAFF MEMBER'S SIGNATURE

I have read the contents and received a copy of this evaluation. I am ☐ am not ☐ attaching a separate statement commenting on it.

Staff Member: _____

Date: _____

7/15/82

Pers

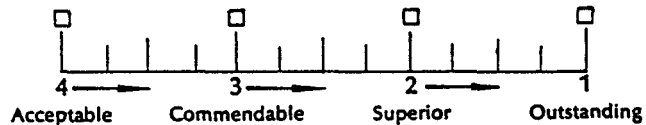
10 PROMOTIONS, DEMOTIONS, AND TRANSFERS. The following action shall be the policy on Promotions, Demotions, and Transfers within the Administration.

- (1) PROMOTIONS. In locating the best qualified person to fill a specific position, the Administration will look to its present employees for the initial consideration. Any assignment of an employee to a job with more responsibility will be considered a promotion.
- (2) DEMOTIONS. An employee may be demoted to a lower position under the following conditions:
 - a. Present position is being abolished.
 - b. Reclassification of position.
 - c. Employee is unable to perform in present position.
 - d. Voluntary request by an employee.
- (3) TRANSFERS. An employee may apply for a transfer to another position by filling out a transfer form which may be obtained from the Personnel Office. Any transfer request shall follow or adhere to the chain of command so that the respective supervisor is aware of such request. The person requesting the transfer will compete along with other applicants for a specific position.

MENOMINEE INDIAN TRIBE OF WISCONSIN

SALARY INCREASE DATA

LEVEL OF PERFORMANCE



- Acceptable** Performance meets the minimum requirements of the position.
- Commendable** Performance is good, dependable and capable. The full scope of job duties and responsibilities are consistently met.
- Superior** Performance clearly surpasses the normal expectations of the position. The individual identifies problems and helps develop solutions. Initiative and foresight are evident.
- Outstanding** Performance is exceptional. It is consistently beyond the expected level of the job. The individual handles a large workload with high degree of skill. Initiative and foresight are demonstrated. Problems are identified and solutions developed. Frequently good new ideas are offered and implemented.

SALARY HISTORY

PRESENT SALARY	DATE OF LAST ADJUSTMENT	TENURE WITH COMPANY (Months)	PRESENT POSITION
\$ _____ B/W			
\$ _____ Annual	____ / ____ / ____	Tenure in present grade	Present Grade
\$ _____ Hourly (if applicable)			

DATA ON PROPOSED SALARY

Has this employee received previous salary adjustments within the last year? Yes ☐ No ☐

Type of Increase: Performance ☐ Promotion ☐ Equity ☐ Is performance adjustment budgeted? Yes ☐ No ☐

Amount of Adjustment \$ _____ Effective Date _____

New B/W Salary \$ _____ New Annual Salary \$ _____

The proposed adjustment represents a _____ % increase over present salary.

CHANGE IN POSITION

New Title

Originator

Personnel Mgr.

Next Level of Mgr.



NATIONAL CENTER FOR STATE COURTS

PERSONNEL ACTION REQUEST

Employee	Employee Number (Assigned by Accounting Dept.)	Date Prepared
Office	Social Security Number	Effective Date

Type of Action: (Check Appropriate Box(es))

- ☐ Original Appointment (Attach Application & Outside Employment Request)
☐ Re-employment (Attach Application)
☐ Return from Leave of Absence
☐ Reassignment or Transfer
☐ Reclassification
☐ Salary Adjustment
 ☐ Merit Increase
 ☐ Cost of Living
 ☐ Promotion
 ☐ Other (Explain in "Remarks" Section)
☐ Employment Status Change

LEAVE OF ABSENCE (Explain Terms and Conditions in "Remarks")

- ☐ Without Pay ☐ With Pay

SEPARATION

- ☐ Resignation (Attach Letter, If Any)
☐ Expiration of Appointment
☐ Other
☐ Lay-off
☐ Retirement
☐ Deceased
☐ Dismissal

OTHER _____

Duties

FROM

TO

	Position Title	
	Salary Rate (Ann/Mo. or Hrly)	
	Salary Grade & Step	
<input type="checkbox"/> Full-time Perm. <input type="checkbox"/> Part-time Perm. <input type="checkbox"/> Full-time Temp. <input type="checkbox"/> Part-time Temp.	Employment Status (Check Appro. Boxes)	<input type="checkbox"/> Full-time Perm. <input type="checkbox"/> Part-time Perm. <input type="checkbox"/> Full-time Temp. <input type="checkbox"/> Part-time Temp.
Anniversary or Expiration Date		

SEPARATION INFORMATION

Last Day on Payroll	Number of Hours Annual Leave Included in Terminal Pay	Forwarding Address
---------------------	---	--------------------

Remarks/Conditions:

Requested by	Date	Fiscal Review	Date
Approved by Director/Designee	Date	Acknowledged by Employee	Date

 AD 25 4/80
 7/15/82

Pers 11 ABSENCES. A leave of absence from the place of employment must have the approval of the immediate Supervisor. The following rules and regulations shall apply to the various absences involved:

- (1) Jury Service. Any employee who is summoned for jury service shall be entitled to leave with pay. Any deficits in pay between jury duty and the place of employment will be made up by the employer. If the employee is on call, the employee shall report back to work unless authorized not to by the appointed authority.
- (2) Voting Absence. An employee who is eligible to vote but is unable to vote during the non-working hours may be granted time off with pay not to exceed one (1) hour upon written notice to their immediate supervisor.
- (3) Vacation. After completion of one (1) year of service in a permanent position, an employee is eligible to take vacation with pay. The vacation is based on your length of service. When taking a vacation, the employee must give a written notice to the immediate supervisor and it will be at the discretion of the supervisor to grant the vacation.
- (4) Maternity Leave. In the case of a maternity leave of absence, an employee has the option of using accrued sick leave, vacation time, or any other accrued compensable time due the employee. A medical certificate from a physician is required to determine the last working day and the anticipated length of absence. As of May 1, 1979, per Federal Mandate, all women on maternity leave will be granted weekly income benefits at a rate of $66 \frac{2}{3}$ of salary.
- (5) Absence Due To Weather. If the weather causes you to be unable to come to work, or requires you to leave work early, you may request that time be changed off to vacation, compensatory time, leave without pay, or make the time up with the consent of the immediate supervisor. Any absence due to inclement weather must be reported to the supervisor as soon as possible.

- (6) Formal Leave of Absence. Leave without pay for a period of up to one (1) month may be granted an employee. The employee must have approval from the immediate supervisor as well as the Personnel Department. Upon expiration of a formal leave of absence, the employee shall be reinstated in the same position vacated, if the position still exists or, if not, to any other vacant position within the same job classification. Failure on the part of the employee to report for work at the end of the expiration date of a formal leave of absence is just cause for dismissal. The formal leave of absence shall not constitute a break in employment service.
- (7) Sick Leave. All persons who are on a full time status will earn sick leave at the rate of one (1) sick day per month. Sick leave shall not be used until it has been accrued. Any unused sick leave shall accumulate from year to year in the employee's sick leave account, to a maximum of 30 days. Upon termination of employment, accrued sick leave will not be paid.
- (8) Compensatory Leave. All hourly employees who are requested to work in excess of the required 40 hour work week will be allowed compensatory time in compliance with the Federal Fair Labor Standards Act. When requesting Compensatory Leave, the employee shall give ample notice to the Supervisor.
- (9) Personal Time. All salaried employees can request personal time off with pay if their work situation warrants the granting of personal time. This request must be approved by the immediate supervisor in all situations.
- (10) Funeral Leave. Up to three days will be allowed with pay for time lost due to a funeral of a member of your immediate family. Immediate family means father, mother, sister, brother, husband, wife, child, father-in-law or mother-in-law. One day with pay will be granted for aunts, uncles, son-in-law, daughter-in-law, sister-in-law, brother-in-law, nieces, nephews, grandparents, or first cousins.

SUPERVISORS — make an entry for every absence. This is a permanent record and should be placed in the employee's personnel file when the page is filled up, or upon termination of employment.

NAME:

HIRE DATE

[illegible]

SUBJECT
EMPLOYEE'S LEAVE RECORD

SECTION 4000 **DATE** 1-1-79

PREPARED BY
PERSONNEL DEPARTMENT

CHAPTER 3 **PAGE** 4156

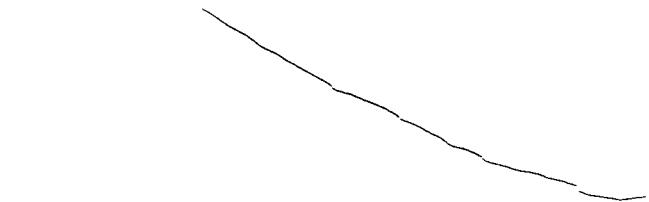
EXHIBIT 22
(MODEL)

EMPLOYEE'S LEAVE RECORD

Department/Office: _____ Name: _____
Prior Creditable Service: _____ Yrs. _____ Mths. Continuous? ☐ Yes ☐ No
Total Length of Service as of 6/30/78 _____ Yrs. _____ Mths. ☐ 5+Yrs. ☐ 6+Yrs.
1978-79 ANNUAL LEAVE (in hrs.) SICK LEAVE (in hrs.) COMP. TIME (in hrs./min.)
 Earned Used Bal. Earned Used Bal. Earned Used Bal.

Balance Carried Forward									
Personal Leave Days									
Add'l. Time for Length of Service									
Pay Period Ending July 6									
July 20									
Aug. 3									
Aug. 17									
Aug. 31									
Sept. 14									
Sept. 28									
Oct. 12									
Oct. 26									
Nov. 9									
Nov. 23									
Dec. 7									
Dec. 21									
Jan. 4									
Jan. 18									
Feb. 1									
Feb. 15									
Mar. 1									
Mar. 15									
Mar. 29									
Apr. 12									
Apr. 26									
May 10									
May 24									
June 7									
June 21									

(Actual Form Size: 8 1/2 X 11)



Pers 12 RESIGNATIONS. Any employee who voluntarily leaves the service of this Administration is required to submit a letter of resignation as their notice of termination. The following shall be considered to be in harmony with Administration policy on Resignations.

- (1) An employee shall submit their resignation in writing at least two weeks prior to their last working day to their immediate supervisor.
- (2) The employee's letter of resignation shall contain the reasons for termination and the effective date of the termination. The original of such resignation letter shall be forwarded to the Personnel Department to be placed in the Employee's Personnel Record folder.
- (3) It is not necessary for the immediate supervisor to formally acknowledge or accept the employee's resignation, the resignation shall become effective as specified in the resignation letter.
- (4) An employee who resigns shall receive payment for all salary earned to include any compensable time earned, and any accrued vacation leave earned.
- (5) All employees who resign shall be sent to the Personnel Department for an exit interview. At this time, the Personnel Department will explain any conversion plans that are available to them such as the Health or Life Conversion Plans.

Pers 13 LAY OFFS. Layoffs can occur, even though this Administration makes every effort to provide continuous employment. In the event of a layoff situation, this Administration will be fair and equitable to the employees. The following shall be Administrative Policy on Lay Offs.

- (1) If it becomes necessary to lay off an employee as a result of a shortage or stoppage of work or funds or the abolishing of a position, it shall be done on the basis of length of service, and the ability to perform in the vacant positions.
- (2) In the event of a lay off situation, the employee shall be given as much notice as possible prior to the actual lay off date.
- (3) If the lay off is in coordination with a disciplinary action, the employee shall be given written notice of the infraction as well as the disciplinary action taken.
- (4) A written report shall be sent to the Personnel Department on any lay off situation. The report shall indicate the reason for the lay off, expected length of the lay off period, and an explanation for the lay off. In such instances, the affected employee shall receive a copy of the written notice.
- (5) If a vacancy occurs in a unit from which an employee was laid off, the employees shall be recalled to work in the inverse order that they were laid off.

TERMINATION CHECKLIST

Terminating employees are to be issued this form upon receipt of a resignation letter or termination notice. The employee will be responsible for obtaining the initials of all those persons responsible for the indicated areas. The completed form should be attached to the Personnel Action Notice and will be retained in the Personnel File.

<u>Name of Employee</u>	<u>Employee No.</u>	<u>Date</u>
<input type="checkbox"/> Letter of Resignation	<input type="checkbox"/> Personnel Action Notice prepared	

Administrative Checks

<input type="checkbox"/> Telephone Credit Card(s) returned	<input type="checkbox"/> Equipment returned
<input type="checkbox"/> Other Credit Card(s) returned	<input type="checkbox"/> Files reviewed for unfinished items
<input type="checkbox"/> Office Supplies Returned	<input type="checkbox"/> Work in Progress
<input type="checkbox"/> Keys returned	<input type="checkbox"/> Library Materials returned
	<input type="checkbox"/> Prescription Card returned

COMMENTS:

Accounting Checks

<input type="checkbox"/> Final Timesheet	<input type="checkbox"/> Check for Unpaid Vouchers
<input type="checkbox"/> Termination Pay	<input type="checkbox"/> Vacation Pay
<input type="checkbox"/> Petty Cash cleared	<input type="checkbox"/> Advances cleared

Personnel Checks

<input type="checkbox"/> Medical Insurance	<input type="checkbox"/> Pension reviewed
<input type="checkbox"/> Conversion forms issued	<input type="checkbox"/> Forwarding address received
<input type="checkbox"/> Tax Deferred Annuity reviewed	<input type="checkbox"/> Personnel file closed
<input type="checkbox"/> Administrative Manual returned	<input type="checkbox"/> I. D. returned

July 15, 1982

NOTICE OF RIGHT TO CONTINUE GROUP MEDICAL COVERAGE
OR CONVERT TO INDIVIDUAL COVERAGE

Date: _____ Group Number _____

To: _____
(Name and Address of Terminating Insured)

Your eligibility for group insurance terminates on _____. When your group medical insurance is terminated, Wisconsin Statute Section 632.897 gives you the right to either continue your medical coverage under the group plan, or to have an individual conversion policy issued to you. These two options are available only if you were covered under the group plan for at least **three consecutive months**. You can elect either option if:

1. You are an employee whose eligibility for group coverage terminates because your employment has ended. The options are not available if you were fired for misconduct on the job.
2. You are the former spouse of an employee, because your marriage ended due to divorce or annulment, and the employee continues to be covered under the group plan.
3. You are a surviving dependent spouse or child of an employee who died while covered under the group plan.

These options are not available if your insurance ends because the employer has terminated the insurance for all persons covered by the plan.

Dependents may continue to be covered under either option, so long as they were insured as eligible dependents for three consecutive months under the group plan prior to termination of that insurance. Dependents continue to be insured as long as they remain an eligible dependent. Except where only a dependent child survives the employee's death, no child may be insured under either option without a parent insured.

The employer is required by Wisconsin law to provide you with a written notice of these rights. You must receive the notice within 5 days after the date the employer knows your eligibility for coverage will terminate.

You have 30 days from the date of the notice to elect an option and pay the premium amount due.

Right to Continue Group Medical Coverage

If you elect this option, you must pay the monthly premium due to the employer. The employer will tell you when and how much is due, and will send your payment to the insurer. You must complete a new enrollment card if you are a former spouse or a surviving dependent. Medical coverage under the group plan continues under this option until the earliest of:

1. The end of 12 consecutive months from the date you elected this option. This period of time is measured from the exact date this option is elected to the same calendar day of the next succeeding months.
2. The date you are eligible for similar coverage under another group medical plan.

- 3. The end of the last month for which premium was paid by you when due.
- 4. The date you move out of state, if you now reside in Wisconsin.
- 5. If you are the former spouse of an employee, the date the employee is no longer covered by the group plan.
- 6. The date the employer terminates the insurance for all persons covered by the plan.

The monthly premium due from you is \$ _____. After you pay the first premium, each payment thereafter is due to the employer by the _____ of each month. Your monthly premium may be mailed or delivered to the employer at this address:

IMPORTANT: This premium may be subject to change if the employer's group rates change.

Right to Convert To An Individual Policy
You may convert to an individual conversion policy instead of electing the right to continue group coverage.

If you already elected, and are covered, under the Right to Continue Group Medical Coverage Option, and it terminates by reasons 1, 4 or 5 under that Option, you may then convert to an individual policy.

In addition, whenever a child is no longer your eligible dependent for group insurance because a limiting age is reached, that child has the right to convert to an individual policy.

The insurer will send you an outline of coverage and an application form with instructions on how to convert.

NOTE: Please keep this part of the Notice Form for your future reference. Contact the employer or the insurer if you have any questions.

This notice form has been prepared as a service to the employer by Wisconsin Employers Insurance Company, your group health insurance carrier.

**NOTICE OF RIGHT TO CONTINUE GROUP MEDICAL COVERAGE
OR CONVERT TO INDIVIDUAL COVERAGE**

Instructions:

Please complete, date and sign this part of the form where indicated and return it to the employer without delay. If you do not notify the employer of your election within 30 days from the date of the Notice, and pay any premium if due, you may lose your right to obtain medical coverage.

Only check **ONE** item.

() I elect to continue medical coverage under the group plan and have read the conditions and requirements to do so as outlined in this Notice form. My first monthly premium due accompanies this form.

() I elect to convert to an individual policy. I request the insurer to send me the appropriate application information at this address:

() I do not elect either option at this time and waive my right to do so under Wisconsin Section 632.897.

Group Number _____

Date Signed _____

Signature and Current Address

(signature)

(address)

- Pers 14 DISCIPLINARY ACTION. It is the sincere desire of this Administration to be fair, equitable, and tolerant with our employees in every way possible, but any willful or inexcusable breaches of work rules, policies, and standards of conduct shall be dealt with firmly. The following will define the penalties, infractions, and the appropriate disciplinary action.
- (1) Acceptance or Solicitation of Gifts in an Official Capacity. Discharge.
 - (2) Misappropriation of, or Falsifying Records Involving Funds. Discharge.
 - (3) Acceptance of Bribes. Discharge.
 - (4) Deliberate Concealment, Removing, Mutilating, Obliterating, or Destroying of Records or Documents. Discharge.
 - (5) Perjury or Fraud. Discharge.
 - (6) Habitual Use of Intoxicants to a Point Where It Interferes With Your Duties. Discharge.
 - (7) Disclosure of Confidential Information. Any disclosure of confidential medical information will result in immediate discharge. For any other disclosure of confidential non-medical information, a three day suspension without pay on the first offense, and immediate discharge on the second offense.
 - (8) Performing Personal Services During Official Hours For Private Gain. Three day suspension without pay on the first offense, discharge on the second offense.
 - (9) Insubordination, Neglect of Duty, Excessive Tardiness. Written warning on the first offense, three day suspension without pay on the second offense, and discharge on the third offense.
 - (10) Unauthorized Absence. Failure to report any absence can result in a written warning on the first offense, three day suspension without pay on the second offense, and a discharge on the third offense.
 - (11) Misstatement of Material Fact in Employment Application. Suspension or Discharge depending on specifics.
 - (12) Drunkenness or Use of Drugs During Working Hours. Written warning on the first offense, three day suspension without pay on the second offense, and a discharge on the third offense.

Pers 15 GRIEVANCE PROCEDURE. Recognizing the fact that grievances will arise, it shall be the policy of the organization to have a grievance procedure that meets with sound management practices. It shall also be policy that any person filing a grievance shall be free from restraint, coercion, discrimination or any reprisal, and they have the right to counsel at their own expense, if they so choose. The following shall be the procedure to the follow in a grievance situation:

- (1) It shall be understood that there is not any real grievance until the supervisor or immediate supervisor is made aware of the employee's grievance. The employee must institute such a notice of grievance within five (5) working days from the date of the incident or cause of grievance. If this procedure is not followed, the grievance will not be heard. In order to initiate a grievance, the employee must put the grievance in writing to his/her immediate supervisor, the appropriate Program Director or the Personnel Manager. They shall have two days to meet with the complainant and to make a decision in writing to complainant. The complainant shall have three days to reject the decision or accept it. If the employee is still not satisfied, he/she may ask the Personnel Manager to have his/her complaint heard by the Grievance Committee.
- (2) The Grievance Committee shall consist of five employees of the organization, two employees on a supervisory level, and three employees on a non-supervisory level. The Chairman will be selected from the total committee of five. If the grievant is from unit or department of one of the committee members, the committee member will excuse themselves from participation. Also present at the meeting will be the Personnel Manager, the employee's supervisor, and the respective employee, and the employee's counsel. If counsel is to be present, it shall be at the employee's expense. The committee shall make a recommendation within three working days from the hearing date to the Personnel Manager. The committee's decision will be final. If after the grievant has received the Grievance Committee's decision, he/she is still not satisfied, an appeal can be initiated to the Appeals Board.

Pers 16 APPEALS PROCEDURE. An employee affected by an action resulting from a personnel decision of the immediate supervisor or the appointed authority shall have the right to appeal before the Appeals Board. Grievances and appeals shall not be heard on issues which are in conflict with established policies and procedures of the Menominee Indian Tribe of Wisconsin.

(1) The following are actions that are appealable:

- a. Refusal to examine.
- b. Lay off.
- c. Denial of benefits.
- d. Position allocation, reallocation, or classification.
- e. Discharge or demotion of a permanent employee.

(2) Appeals Board. The Appeals Board members shall consist of or have the following characteristics:

- a. Annual appointment by the Tribal Governing Body.
- b. Shall consist of five (5) members from the community.
- c. Shall not be an employee of the Administration.
- d. A chairperson shall be elected by the Appeals Board Committee.
- e. Chairperson shall determine if any committee member has a personal interest and shall excuse the members if there is an interest.
- f. The Appeals Board shall have the power to uphold or reverse a Personnel action.

(3) Procedure. The following shall be the procedure to follow in an Appeal Procedure:*

*Employees must draft a personal letter to the Personnel Department, there is no standard form.

- a. Written requests must be filed within a seven (7) day (calendar day) period from the date of the negative action. The appeal shall be sent to the Personnel Department who will arrange a meeting with the Appeals Board and the aggrieved person within a seven (7) day (calendar day) period.
 - b. All written requests must be specific with facts to substantiate the statements.
 - c. If the procedure is not adhered to by the aggrieved employee within the time frame mentioned, the appeals board committee shall refuse to hear the appeal.
- (4) Appeals Board Hearing. The hearing shall have the following persons present at the hearing.
- a. The grievant and their counsel, if any:
 - b. The grievant's immediate supervisor.
 - c. Any other person against whom the grievance may be filed.
- (5) Appeals Board Proceeding. The following procedure shall be adhered to at all appeals:
- a. Chairperson of Appeals Board calls the proceedings to order.
 - b. The aggrieved employee presents his/her case of the grievance or appeal.
 - c. The supervisor presents his/her case in the grievance or appeal.
 - d. Witnesses testify as according to previous sequence.
 - e. Cross questioning is at the discretion of the Chairperson of the Appeals Board.
 - f. Decisions on the appeal will be reached after the presentations and testimony are heard by the aggrieved employee and the respective supervisor.
- (6) Rules of Conduct. The following rules of conduct shall apply at the Appeals Board Hearings.
- a. Witnesses are present only when testifying.
 - b. Hearings are open to the general public, however, they may not participate in the proceedings.
 - c. Any confidential information may be discussed in private by the immediate members of the proceedings.

Pers 17 CAREER DEVELOPMENT. It shall be the policy of this Administration to provide opportunities for training and education that will benefit this Administration as well as the employees. The Administration encourages its employees to take College, Vocational, or Technical courses on your own time.

- (1) An employee may take part in workshops, seminars, college courses, or training programs during the normal working hours, with no loss of pay, providing they have the approval of the immediate supervisor and the next line of management.
- (2) Training seminars or workshops must be work-related if they occur during the normal working hours. An employee shall be limited to four seminars within each calendar year.
- (3) Fees or any related cost for a workshop, seminar, or college course shall be at the program expense within the limits of their authorized budget.
- (4) After the successful completion of a course, the employee must submit proof of completion and a paid receipt of the tuition bill. The employee will then be reimbursed for the tuition cost.

The more an employee learns about the department and their job, the more valuable they will be as an employee, consequently, all employees are encouraged to participate in an educational program for self-improvement.

Pers 18 EMPLOYEE BENEFITS. As a new employee of this Administration, you are entitled to certain Employee Benefits that are available through the Personnel Department.

- (1) Insurance On Your Life. You are eligible for this benefit after you have completed one month of full time work. The amount of insurance is based on the insured's annual income. It is calculated on the basis of one times annual income rounded to the next highest \$1,000. Upon attainment of age 65, the amount of Life and AD&D will be reduced by 50%. Upon attainment of age 70, the Life will be further reduced, if necessary, to \$5,000 and the AD&D is discontinued.
- (2) Accidental Death and Dismemberment. This insurance is on a 24 hour coverage. The benefits and limitations are indicated in the Life Benefits,
- (3) Accident and Sickness Insurance (non-occupational). You are eligible for this benefit after one month of full time work. The benefits are payable on the 1st day of accident, 8th day of sickness and up to a maximum of 26 weeks. This benefit will pay 66 2/3% of your basic weekly earnings up to a \$200 maximum.
- (4) Insurance On Your Health. You are eligible for this benefit on the 1st day of the month following the date of hire. For those employees who fail to enroll when protection is first available to them, evidence of insurability will be required.
- (5) Sick Leave Benefits. Sick Leave is earned at the rate of one sick day per month. It must be earned before it can be taken, i.e., after one month's work, you have one sick day accrued. The ceiling limitation for accruing sick leave will be 30 days.
- (6) Vacation Benefits. An employee is eligible for vacation as follows:
 - a. Two weeks paid vacation after one year.
 - b. Three weeks paid vacation after five years.
 - c. The ceiling limitation for accruing annual leave shall be 30 days.
- (7) Public Service Employee (CETA PSE). On all PSE employees, the following sick leave benefits and vacation benefits will apply:

SICK LEAVE BENEFITS. Sick leave is earned at the rate of one sick day per month accumulative to 30 days. It must be earned before it can be taken, i.e., after one month's work, you have one sick day accrued.

VACATION BENEFITS. Since a PSE employee is a limited term employee, the vacation shall be earned as follows:

- a. After one month's work, the employee will have earned 6.66 hours a month.
- b. The vacation hours earned must be taken within the grant or funding period. If not, the vacation earned shall be lost.

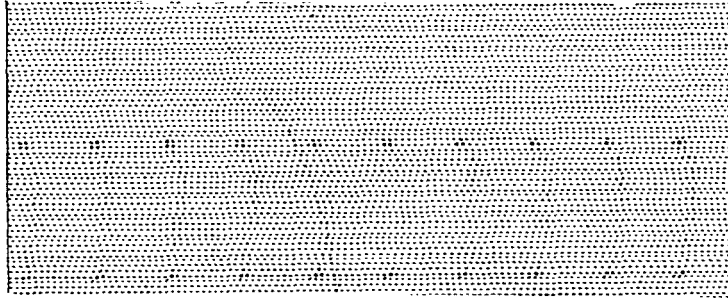
INSURANCE BENEFITS. The insurance benefits for Public Service Employees (CETA) will be equal to staff employees of the organization.

Employer:

Employee:

Certificate Number:

Effective Date:



WISCONSIN EMPLOYERS INSURANCE COMPANY

Group Insurance Certificate

This certificate is evidence of one of the many fringe benefits provided by your employer. Your insurance certificate describes coverages provided while you are insured under the Group Plan sponsored by your employer. The Master Group Policy held by the Policyholder determines all rights and benefits which are briefly outlined in your certificate. The Master Group Policy may be examined at the West Bank and Trust, Green Bay, Wisconsin (Policyholder) or Wisconsin Employers Insurance Company, Green Bay, Wisconsin 54303.

The Schedule of Benefits printed on the following page shows the effective date of your coverage and briefly outlines the benefits which may apply to you and which are described more fully on the following pages.

Your beneficiary is determined by the enrollment card on file with the Insurer.

If you acquire a dependent, check immediately with your employer to determine what must be done to have the dependent included for coverage. Failure to act promptly could result in denial of coverage for your dependent.

This certificate replaces and supersedes any and all insurance certificates and riders thereto bearing the same or a prior effective date that may have been previously issued under the Master Group Policy or Policies.

Charles J. Melzer, Jr. Secretary *W. J. Hilliard* President

POLICYHOLDER - TRUSTEE OF WISCONSIN EMPLOYERS INSURANCE COMPANY GROUP TRUST NO. 02

EMPLOYEE

CERTIFICATE NUMBER	M07565 / [REDACTED]
LIFE EFFECTIVE DATE	04/01/92
MEDICAL EFFECTIVE DATE	10/01/81
A & S EFFECTIVE DATE	04/01/82

LIFE- [REDACTED] ACCIDENTAL DEATH AND DISMEMBERMENT-
 *INSURANCE AMOUNTS REDUCE 75% AT AGE 70
 ACCIDENTAL DEATH AND DISMEMBERMENT TERMINATES AT AGE 75
 DEPENDENT LIFE - INCLUDED

Life amount
1x annual
salary

WEEKLY INCOME BENEFITS - ████████ - BUT NOT TO EXCEED 66% OF BASIC SALARY
BENEFITS BEGIN- DAY 1 FOR ACCIDENT DAY 8 FOR SICKNESS
26 WEEKS MAXIMUM PERIOD
BENEFITS TERMINATE AT AGE 70

PARTS I AND II - MEDICAL BENEFITS AND
PART III - SPECIFIED CONDITION BENEFITS FOR. EMPLOYEE ONLY
PART IV - MEDICARE ELIGIBLE BENEFITS FOR. NOT APPLICABLE

LIFETIME MAXIMUM - PARTS I, II AND III COMBINED. . . \$500,000 INCLUDING THE
\$10,000 EXCESS SPECIFIED CONDITION MAXIMUM
PART IV \$500,000

PART I BENEFITS ARE PAYABLE UP TO THE FOLLOWING MAXIMUMS

- | | | | |
|----|--|---|-----------------------------|
| 1. | HOSPITAL - 365 DAYS PER CONFINEMENT. | SEMI-PRIVATE ROOM AND MISCELLANEOUS FEES. | USUAL AND CUSTOMARY IN FULL |
| 2. | AMBULANCE BENEFIT - PER CONFINEMENT. | | USUAL AND CUSTOMARY IN FULL |
| 3. | SUPPLEMENTAL ACCIDENT EXPENSE BENEFIT. | | \$300 |
| 4. | X-RAY AND LABORATORY BENEFITS. | | USUAL AND CUSTOMARY IN FULL |
| 5. | IN-HOSPITAL DOCTOR CALLS | | USUAL AND CUSTOMARY IN FULL |
| 6. | SURGICAL BENEFIT | | USUAL AND CUSTOMARY IN FULL |
| 7. | ANESTHESIA BENEFIT | | USUAL AND CUSTOMARY IN FULL |
| 8. | MATERNITY BENEFIT. | | USUAL AND CUSTOMARY IN FULL |

PART II BENEFITS ARE PAYABLE CALENDAR YEAR DEDUCTIBLE- \$50
80% OF NEXT \$2,000 PLUS 100% THEREAFTER FOR
BALANCE OF CALENDAR YEAR

PARTS III AND IV BENEFITS ARE PAYABLE AS DESCRIBED IN THE TEXT OF THIS CERTIFICATE.

THE PRE-EXISTING CONDITIONS LIMITATION DESCRIBED IN THIS CERTIFICATE DOES APPLY TO ALL COVERED CHARGES.

69-76- - - -

PAGE 1

WISCONSIN EMPLOYERS INSURANCE COMPANY, GREEN BAY, WISCONSIN



To be attached to and made part of your Certificate of Group Insurance. Effective April 29, 1979, the following changes are made to the Plan of Group Insurance.

A. Employee Group Life Insurance Benefits

The following benefit changes applies to all active employees:

"Life insurance continued in accordance with the Waiver of Premium provision will terminate at age 70."

"Life insurance benefits reduce 75% at age 70."

B. Group Accidental Death Dismemberment Benefits

The following benefit change applies to all active employees.

"Accidental Death and Dismemberment benefits reduce 75% at age 70."

C. Group Weekly Disability Income Insurance

The following benefit change applies to all active employees.

1. "Weekly Disability Income benefits terminate at age 70."
2. Group Weekly Disability Income exclusion item b. is deleted from your Certificate. Benefits are available for a total disability because of pregnancy and resulting childbirth.

D. Group Medical Insurance

The Maternity Benefits provision of the plan, as well as any references to that provision, are hereby removed in their entirety. Medical expenses incurred due to pregnancy and resulting childbirth are treated the same as any other covered sickness for all covered female employees and covered dependent spouse. Loss of time incurred by any covered female employee due to pregnancy and resulting childbirth is payable as any other covered sickness under the Group Weekly Disability Income Insurance provision. Payment of medical or loss of time benefits is subject to all provisions of the plan as for any other covered sickness, such as Extension of Benefits, General Limitations and any benefit maximums. Benefits are also subject to the pre-existing condition exclusion, if it applies to your plan. Expenses for normal pregnancy and resulting childbirth are not available for dependent daughters. However, benefits are payable for complications of pregnancy for any covered female person.

Effective December 6, 1981 this item D is changed to also cover normal pregnancy and resulting childbirth benefits the same as any other covered sickness for an insured dependent daughter.

E. Group Medicare Companion Insurance

The following benefit change applies to all covered employees and their covered dependents:

The Medicare Companion Insurance and any references to such coverage are deleted from the Plan. Coverage for all covered persons eligible for Medicare Parts A and B will be subject to the Coordination of Benefits provision. Plan benefits will be coordinated with Medicare Parts A and B whether or not the covered person has enrolled in the Medicare program. The total benefit level available to each covered person will not reduce due to eligibility for Medicare benefits, nor will it exceed the level of benefits available prior to eligibility for Medicare benefits.

Any portion of the Certificate, or of any riders which were previously attached to and made part of the Certificate, which conflicts with the specific provisions of this Rider is deleted.

WISCONSIN EMPLOYERS INSURANCE COMPANY

A handwritten signature in cursive script, reading "W. J. Hilliard".

President



Wisconsin Employers Insurance Company

Change in Plan Endorsement

To be attached to and made part of your Certificate of Group Medical Insurance form GC 151.

1. KIDNEY DISEASE BENEFITS

Effective November 4, 1981 the Group Specified Condition Insurance section of your certificate describing payment of benefits for kidney disease up to \$30,000 per calendar year is removed. Benefits for treatment of kidney disease are payable the same as for any other sickness covered by the Plan.

2. TUBERCULOSIS BENEFITS

Effective November 4, 1981 the Group Specified Condition Insurance section of your certificate describing payment of benefits for tuberculosis up to 90 days is removed. Benefits for treatment of tuberculosis are payable the same as for any other sickness covered by the Plan.

3. DIABETES BENEFITS

Effective November 28, 1981 benefits are provided for one insulin infusion pump per year for treatment of diabetes. The pump must be in use for 30 days prior to purchase. Benefits are payable under the Group Major Medical Insurance section of your certificate. Payment is subject to the Major Medical calendar year deductible and co-insurance percentage as shown on the Schedule of Benefits page.

4. DEPENDENT DAUGHTER MATERNITY BENEFITS

Effective December 6, 1981 the Plan will provide benefits for normal pregnancy and resulting childbirth of your covered dependent daughter. Benefits payable are the same available to female employees and covered spouses eligible for maternity benefits.

The above changes to Plan benefits apply to expenses you and your covered dependents incur on or after the effective dates of such changes.

All provisions and conditions of coverage of the certificate to which this Endorsement is attached remain unchanged, except if you or your dependents are eligible for the benefits as described herein.

Charles J. McLaughlin
Secretary

W. J. Hilliard
President



WISCONSIN EMPLOYERS INSURANCE COMPANY

Change in Plan Rider

To be attached to and made part of your Certificate of Group Insurance form GC151.

The Conversion Privilege for Hospital and Surgical Benefits is removed and replaced with the following:

RIGHT TO CONTINUE GROUP COVERAGE AND CONVERSION PRIVILEGE

Wisconsin law 632.897 gives you the right to either continue your coverage under the group medical plan, or to have an individual conversion policy issued to you. These two options are available only if you were covered under the group plan for at least three consecutive months. Also, the options are available only if the employer sponsoring this group coverage keeps the plan in effect after your eligibility for coverage has ended. You can elect either option if:

1. You are an employee whose eligibility for coverage ends because your employment has ended (the options are not available if you were fired for misconduct on the job).
2. You are a former spouse of an employee who continues to be covered under the plan, and your marriage ended because of divorce or annulment.
3. You are a surviving dependent spouse or child of an employee who died while covered under the plan, and you were also covered immediately prior to the employee's death.

Dependents may also be covered under either option if they were covered immediately prior to the date your eligibility for coverage under the plan ended. They may continue to be covered under the plan (or the individual policy) as long as they are eligible dependents as defined by the plan (or policy).

The employer is required by Wisconsin law to provide you with a written notice of your right to continue coverage in the employer's group health plan or to convert to an individual policy.

You have 30 days from the date of the notice to elect an option and pay the premium amount due. If you elect to continue the group coverage, you must pay the premium to the employer. The employer must continue to send in your premium to the insurer each month thereafter. If you elect to convert to an individual policy, you must pay the premium directly to the insurer.

The insurer will send you an outline of coverage and an application form with proper instructions.

Right to Continue Group Coverage

If you elect this option, medical coverage under the group plan will be continued until the earliest of the following events occurs:

1. The end of the 12th consecutive month from the date you elected this option;
2. The date you are eligible for coverage under another group medical plan;
3. The end of the month for which premium was paid by you when due;
4. The date you move out of state, if you reside in Wisconsin;
5. The date the employee is no longer covered by the plan, if you are a former spouse of that employee.

After you pay the first premium, each payment thereafter is due to the employer each month. Your monthly premium may be mailed or delivered to the employer.

Right to Convert to an Individual Policy

You may convert to an individual conversion policy if you do not elect to continue coverage under the group plan.

If you did elect to continue coverage under the group plan, you may still convert to an individual policy if that coverage ends under items 1, 4 or 5 of the Right to Continue Group Medical Coverage above.

In addition, a dependent child may convert to an individual policy on the date a limiting age is reached while insured under the group plan. This dependent right is available while you are still an actively at work employee, or while you are covered under the Right to Continue Group Medical Coverage.

Any portion of the Certificate which conflicts with the specific provisions of this Rider is deleted.

WISCONSIN EMPLOYERS INSURANCE COMPANY

W. J. Hilliard
President

How to File a Claim

To receive payment for any type of benefit it is necessary that Wisconsin Employers Insurance Company be notified at P.O. Box 1100, De Pere, Wisconsin 54115.

You should receive an Identification (I.D.) Card from your employer. It will list your name, your employer's name and account number (sometimes called a "policy number") and the effective date of your insurance.

For all medical bills (whether incurred as an in-patient or out-patient) it is necessary that this I.D. Card be submitted to the hospital, clinic or doctor's office. Please request that your bills be submitted to our office on the hospital's or clinic's own forms. (You do not need a special insurance company form at this time.) Upon receipt of this information from the doctor and hospital, we will process your claim and normally make payment directly to the doctor, clinic or hospital with a copy of payment to you. If additional information is required, our office will contact you directly. If the doctor, hospital or clinic is unwilling to forward their medical charges to the Insurer directly, or if you prefer to pay the charges yourself and request reimbursement from the Insurer, please use our convenient claim envelope, complete the questions inside the flap, enclose your bills and drop it in the mail. Claim envelopes are available from your employer or the Insurer.

If your Plan includes Group Weekly Disability Income Benefits you should notify your employer as soon as possible of your disability and obtain from him a bright red "disability claim form". This form must be completed by your employer and forwarded to the doctor's office. Upon receipt of your doctor's verification of your disability, your claim will be processed and any payment due will be mailed promptly to you. Along with your disability check you may receive a yellow supplementary form. If you are still medically disabled, this form must again be completed by your attending physician and submitted to our office to assist us in processing Group Weekly Disability Income Benefit claims on a prompt basis.

Definitions

Wherever used in this certificate:

Primary Insured means an employee who is insured under the Group Policy.

Dependent means:

a. For Dependent Group Life Insurance coverage:

1. Your lawful spouse under age 65;
 2. Your unmarried dependent children (including adopted, step or other children) who reside in your home and derive at least 50% of their support and maintenance from you, provided any such child is at least 10 days old but less than 19 years old.
- b. For Dependent Group Medical coverage:
1. Your lawful spouse;
 2. Your unmarried children (including adopted, step or other children) who reside in your home and derive at least 50% of their support and maintenance from you, provided any such child is:
 - (i) less than 19 years of age;
 - (ii) 19 but less than 25 years of age and enrolled as a full-time student at an accredited school, college or university; or
 - (iii) 19 or older and incapable of earning a living due to mental retardation or physical handicap.

In any event, a person eligible for insurance as a primary insured may not be insured as a dependent. If both parents of a child are eligible for insurance as an employee, only one parent may enroll for dependent coverage.

Covered Person means a primary insured or his dependent who is insured under the Group Policy.

Injury means an accidental bodily injury for which treatment is received while covered under the Group Policy. Conditions such as muscle tiredness due to overindulgence in athletic or physical activity are considered a "sickness".

Sickness means the illness, disease, bodily or mental infirmity of a covered person for which treatment is received while he is covered under the Group Policy.

Disability means accidental bodily injury sustained or sickness or disease contracted.

Total Disability means (1) for you, the employee or your spouse, inability to perform each and every duty pertaining to any occupation (in the case of a housewife, inability to perform the normal duties of a housewife) and (2) for

a child, inability to perform the normal activities of a child. The Insurer has the right to require that total disability be verified by the written statement of an attending physician.

Hospital means an institution operated pursuant to law for the care and treatment of sick or injured persons, with organized facilities for diagnosis and surgery within the confines of the institution and having 24-hour nursing service. Hospital does not include (1) a convalescent or extended care facility unit within or affiliated with the hospital, (2) a clinic, (3) a nursing, rest, convalescent home or extended care facility, nor (4) an institution operated primarily for the care of the aged. Hospital shall include licensed institutions without facilities for major surgery which provide for care and treatment of tuberculosis, mental and nervous disorders, alcoholism, and drug abuse.

Confinement in a hospital means confinement as a resident patient for at least 15 consecutive hours in a hospital on a basis that a charge is made by the hospital for room, board and general nursing care.

Intensive Care Unit or a Coronary Care Unit means a section, ward, or wing within a hospital which is operated exclusively for critically ill patients and provides special supplies, equipment and constant observation and care by registered professional nurses or other highly trained hospital personnel; excluding any hospital facility maintained for the purpose of providing normal post-operative recovery treatment or service.

Convalescent Facility means only an institution which meets fully every one of the following requirements: (1) is regularly engaged in providing skilled nursing care for sick and injured persons at the patient's expense; (2) requires that patients be regularly attended by a physician and that medication be given only on the order of such physician; (3) maintains a daily medical record of each patient; (4) continuously provides nursing care under twenty-four-hour-a-day supervision by a nurse who is an R.N.; (5) is not, except incidentally, a home for the aged, a hotel, or the like; (6) is not, except incidentally, a place for drug addicts, alcoholics, or the mentally ill; (7) is currently licensed as a nursing home, if such licensing is required in the jurisdiction where located; and (8) has permanent facilities for the care of six or more resident inpatients.

Insurer means Wisconsin Employers Insurance Company, De Pere, Wisconsin 54115.

Actively at Work means continuous employment on a permanent basis at the employer's normal place of business (or at some other location to which the employer's business requires you to travel) during the employer's normal work week. Unless your employer's Subscription Agreement specifies otherwise, "normal work week" means at least 30 hours per week.

Medicare means benefits under Part A and B of Title XVIII of the Social Security Act of 1965, as amended.

Physician or Surgeon means any individual who is (1) licensed by law to perform services for which benefits are provided under the Group Policy and (2) acting within the scope of his license in performing these services in the state in which he is licensed.

Complications of Pregnancy — Benefits for loss caused by or resulting from complications of pregnancy shall be payable in the same manner as any other covered sickness.

Complications of pregnancy means:

- a. Conditions requiring hospital confinement (when the pregnancy is not terminated), whose diagnosis are distinct from pregnancy but are adversely affected by pregnancy or are caused by pregnancy, such as acute nephritis, nephrosis, cardiac decompensation, missed abortion and similar medical and surgical conditions of comparable severity, but shall not include false labor, occasional spotting, physician prescribed rest during the period of pregnancy, morning sickness, hyperemesis gravidarum, pre-eclampsia and similar conditions associated with the management of a difficult pregnancy not constituting a nosologically distinct complication of pregnancy; and
- b. Non-elective cesarean section, ectopic pregnancy which is terminated and spontaneous termination of pregnancy, which occurs during a period of gestation in which a viable birth is not possible.

Pre-existing condition means a sickness or injury for which you have received medical care, treatment, services, diagnosis, consultation or advice during the six-month period immediately prior to the effective date of your insurance under the Group Policy. Pre-existing conditions are covered after the end of a period of: (1) six consecutive months during which you are continuously insured under the Group Policy and not receiving medical care, treatment,

services, diagnosis, consultation or advice with respect to the pre-existing condition; or (2) twelve consecutive months during which you have been continuously insured under the Group Policy.

Customary, Usual and Reasonable defined: As determined by the Insurer "customary, usual and reasonable" means payment of the usual fees charged by the provider for services rendered but not to exceed the lesser amount of the following: (1) the fee most frequently charged by such provider of service for a comparable service or a service of comparable gravity, severity and magnitude; or (2) the fee most frequently charged by the providers of a like service with similar training and experience for the performance of a comparable service, or a service of comparable gravity, severity and magnitude, in the locality where the service was performed.

General Information

In order to be insured you must be included in an eligible class, properly enrolled and have completed any required waiting period, all in accordance with the terms of the Group Policy. If a date is shown following the heading "Effective Date" on Page 1 of this Certificate, your insurance is effective on that date, if you are actively at work on the listed effective date. If you are not actively at work on the listed effective date, the effective date of your insurance coverage will be deferred until the date you return to active, full-time employment with your participating employer.

If the Group Policy is changed or if your participating employer elects to change the Plan he sponsors, any change resulting in an increase in benefits will apply only to an employee who is actively at work and to dependents who are not totally disabled on the effective date of the change. Otherwise, the increase is deferred until the employee returns to active work or the dependent is not so disabled.

Insurance for your dependents is effective on the same date your own insurance becomes effective or on the date you first acquire a dependent, whichever is later, provided: (1) you apply for dependent coverage within 31 days of the date you are first eligible for such coverage, and (2) the dependent is not totally disabled on the date coverage is to become effective. If condition (1) is not met, your dependent will be considered a late applicant and subject to evidence of insurability requirements. If condition (2) is not met, the effective

date of the dependent's coverage will be deferred until he is no longer so disabled. Your dependents may not be insured for a coverage unless you yourself are insured.

Any child born to you while your dependent coverage under the Group Policy is in effect will be insured automatically from the moment of birth. The requirement that a dependent may not be totally disabled on the effective date of his insurance is waived and does not apply to such newborn child.

Coverage for an insured newborn child consists of coverage for injury or sickness to the same extent provided other dependents insured under the Group Policy. This includes necessary care and treatment of medically diagnosed congenital defects, birth abnormalities, prematurity and functional repair or restoration of any body part when necessary to achieve normal body functioning, but does not include cosmetic surgery to be performed only to approve appearance.

Additionally, the following charges made with respect to an insured well baby will be considered eligible charges under the Maternity Benefit: hospital charges for nursery room, board and care, charges by a hospital and physician for circumcision of a newborn child; charges by a physician for the routine examination of a newborn child prior to such child's release from the hospital. Injections or immunizations not necessary for the treatment of an injury or sickness are not covered.

Payments for medical expenses as described in this Certificate are made only for those charges incurred while insured except for the Extended Benefit.

Termination of Insurance

Insurance on any covered person will terminate on the earliest of the following dates:

- a. The end of the last month for which the premium (whether paid by you or your employer) was paid when due;
- b. The date the Group Policy terminates;
- c. The date your employer terminates his Plan under the Group Policy;
- d. With respect to a specific coverage, the date it is deleted from the Group Policy or from your employer's Plan;
- e. The date any covered person enters the Armed Forces of any country or international organization;

sustained), or any other kind of disease.

your Group Life Insurance includes a Reduction For Age the same reduction applies to your Group Accidental Death and Dismemberment Insurance and will be applied on the same basis.

Dependent Group Life Insurance

(Note: This coverage is in effect only if so indicated on the Schedule of Benefits.)

You will be paid the amount of your dependent's Group Life Insurance in the event of the death of one of your dependents while insured. If you do not survive the dependent, the insurance benefit will be payable at the option of the Insurer to any one or more of the following surviving relatives of the insured dependent: mother and father; child or children; brothers or sisters or the deceased dependent's estate.

The Schedule of Dependent Life Insurance is as follows:

Spouse

Under age 51 \$2,500
At least 51 but not yet 60... 1,500
At least 60 but not yet 65... 1,000

Child

At least 10 days but not yet
19 years 1,000

Group Weekly Disability Income Insurance

(Note: This coverage is in effect only if so indicated on the Schedule of Benefits.)

If you are totally disabled because of an injury or sickness, you may be eligible to receive Group Weekly Disability Income Insurance payments. Benefits begin on the day of disability stated on the Schedule of Benefits, except that no benefit payment will be made for any day of disability which is prior to the date of the first medical treatment for such disability. The medical treatment may be given by a physician or registered nurse employed by your employer or by any other physician.

To be eligible for the payment of benefits on account of an injury, your total disability must commence, and treatment be given, within 30 days after the injury's occurrence.

If you are disabled twice by the same cause, and these periods of disability are separated by more than 90 days of work, you are eligible for a separate Maximum Period for each disability.

If you are disabled twice by the same cause, and these periods of disability are separated by less than 90 days of work, you are eligible for one Maximum Period for all such disabilities combined.

The Weekly Income Benefit will be reduced by the amount that such benefit and any Social Security benefit paid or payable exceeds 66% of your basic weekly salary from your employer.

The amount of the Weekly Income Benefit which is to be paid is shown on the Schedule of Benefits. Benefits terminate at age 65, except for a claim which commenced prior to your 65th birthday.

Group Weekly Disability Income Insurance **DOES NOT COVER** any disability resulting from:

- a. War or any act of war, or participation in the commission of an assault, felony, or riot;
- b. Pregnancy, except that complications of pregnancy are considered a sickness and covered on the same basis as any other sickness;
- c. Any injury or illness for which you are covered by Worker's Compensation or occupational Disease Laws;
- d. Pre-existing conditions, if the Schedule of Benefits indicates that they are applied to the Plan;
- e. Disability while not under a physician's care; or
- f. Self-inflicted injury or self-induced sickness;
- g. Taking a drug, medicine, sedative or hallucinogen, except as may be prescribed or administered by a physician;
- h. Cosmetic surgery unless necessary as the result of an injury sustained while insured for Group Weekly Disability Income Insurance. Further, benefits are not payable if loss occurs for the performance of an optional or voluntary surgical operation or procedure, such as an elective abortion.

Group Medical Insurance for Employees and their Dependents

(Note: This coverage is in effect only if so indicated on the Schedule of Benefits.)

Your Group Medical Insurance Plan is a four part Plan and has been designed to

help you avoid the financial hardship that often accompanies a prolonged sickness or serious injury. The four parts are:

- Part I Group Basic Medical Insurance
- Part II Group Major Medical Insurance
- Part III Group Specified Condition Insurance (Alcoholism, drug abuse, mental/nervous disorders, tuberculosis or kidney disease)
- Part IV Group Medicare Companion Insurance (for persons eligible for Medicare)

Benefits are payable up to the applicable maximum shown on the Schedule of Benefits. Benefits are paid as stated on the following benefit pages.

Part I Group Basic Medical Insurance

Basic Benefits are payable during each calendar year from the first dollar of covered charges incurred up to the maximum amounts listed on the Schedule of Benefits. However, Basic Benefits do not include charges arising from mental and nervous disorders, alcoholism, drug abuse, tuberculosis or kidney disease. These conditions are covered under Part III — Group Specified Condition Insurance.

Hospital Benefits

Inpatient

You are eligible to receive benefits for covered charges for each hospital confinement as shown on the Schedule of Benefits.

Hospital Board and Room

Covered hospital charges are those customary, usual and reasonable charges incurred by any one covered person on account of sickness or injury for semi-private room, ward, intensive care or coronary care. Benefits for a private room are limited to an amount equivalent to the rate charged for the greatest number of semi-private rooms in the hospital in which confined. Such charges are payable up to the maximum specified on the Schedule of Benefits.

Necessary Service and Supplies

You are eligible to receive benefits for necessary services and supplies furnished by the hospital (other than room and board) while you are hospital confined, up to the maximum shown on the Schedule of Benefits. This includes coronary care and intensive care facilities.

You are eligible to receive benefits for x-ray and/or laboratory examinations and associated radiology and pathology charges which your physician orders during your hospital confinement. Benefits are provided irrespective of whether you are billed directly by the hospital or by an independent doctor or technician properly administering the examinations. Benefits payable will not exceed the customary, usual and reasonable charges for the examination and/or medical services.

Convalescent Facility

You are eligible to receive benefits for charges made by a convalescent facility for room, board, and general nursing services and other necessary services and supplies during a continuous period of confinement, if the confinement begins within 14 days immediately following a period of covered hospital confinement of at least three consecutive days and is the result of the same sickness or injury which caused the hospital confinement. Benefits are payable for up to 60 consecutive days per confinement.

Successive confinements are considered to be one continuous confinement unless they are separated by 30 consecutive days during which you are not confined.

Outpatient

All covered hospital charges are paid in full as an out-patient to discourage unnecessary or prolonged confinement. These include physiotherapy, diagnostic procedures, emergency, radiation treatment, kidney dialysis, chemotherapy, or inhalation therapy.

X-Ray & Laboratory Benefit

If you are not hospital confined for an illness or injury and if a physician recommends that you undergo x-ray and/or laboratory examinations, the Insurer will pay the customary, usual and reasonable charges up to the maximum shown on the Schedule of Benefits for necessary x-ray and laboratory tests incurred and associated radiology and pathology charges.

Charges incurred for dental treatment or pregnancy (except complications of pregnancy) are not covered under this benefit.

Supplemental Accident Expense Benefit

If you sustain an accidental injury while insured and if you incur, within 90 days after the date of the accident, expense for necessary:

- a. Medical or surgical treatment or supplies;

- b. Laboratory or x-ray examinations;

- c. Services of a registered nurse (if such nurse is not a member of your family); or

- d. Dental charges for injury to sound natural teeth;

the Insurer will pay the amount by which such expenses exceed any other benefits payable under Part I, up to a maximum of \$300.00 for any one accident.

Ambulance Benefit

If, because of an injury or sickness, you require ambulance transportation, the Insurer will pay the actual charges incurred up to the maximum amount specified on the Schedule of Benefits. Transportation must be to the nearest hospital qualified to provide treatment for the injury or sickness, unless the Insurer gives written consent to the contrary. All ambulance transportation occurring within a period of 30 consecutive days will be considered as one disability and the maximum benefit will be applied to all ambulance charges collectively. Transportation occurring 30 or more days after the immediately preceding ambulance transportation will be considered a separate disability and a maximum benefit will again be available.

In Hospital Medical Treatment

When, as a result of a sickness or injury, you are confined in a hospital and a physician is consulted at the hospital where confined, payment is made up to the maximum shown on the Schedule of Benefits on a customary, usual and reasonable basis for not more than one visit per day by the attending physician nor more than one visit per day by one other physician who is required for his specialized services in connection with the condition for which you were confined, not to exceed the maximum number of visits during any one period of confinement.

No payments will be made for medical visits resulting from pregnancy (except complications of pregnancy), dental treatment, or for any treatment rendered following a surgical operation.

Operations — Surgical Benefit

If you incur physician's expenses on account of surgical services, performed by a physician, consisting of operative and cutting procedures (including the usual post-operative care) for treatment of injury, sickness, reduction of fracture or dislocation, performed in or out of a hospital, the physician's customary, usual and reasonable fee will be paid up

to the maximum shown on the Schedule of Benefits.

In addition, necessary expense for surgical treatment performed on the jaws or gums, will be payable up to the maximum shown on the Schedule of Benefits on a customary, usual and reasonable basis for:

- a. The reduction of fractures and dislocation of the jaw;
- b. The excision of partially or completely unerupted impacted teeth;
- c. The excision of the tooth root without the extraction of the entire tooth;
- d. Other incision or excision procedures on the gums and tissues of the mouth when they are not performed in connection with the extraction or repair of teeth.

If such surgical services are performed while you are confined as an in-patient within a hospital, the Insurer will pay the maximum shown on the Schedule of Benefits of the customary, usual and reasonable fees for the services of a physician who actively assists the operating surgeon in the performance of such surgical services when the condition of the patient and type of surgical service requires such assistance and when the hospital does not employ interns, residents or house staff.

Anesthesia Benefit

If you incur charges for anesthesia and its administration when furnished either in or out of hospital by an anesthesiologist, physician or any other person rendering such service (other than the operating physician or his assistant) who is not an employee nor compensated for such administration by a hospital, laboratory or other institution, the Insurer will pay benefits on a customary, usual and reasonable basis up to the maximum shown on the Schedule of Benefits for such expense incurred.

Maternity Benefits

For Married Employees Enrolled for Family Coverage

Hospital charges incurred on account of pregnancy or resulting childbirth or complications of pregnancy, are included as any other covered condition and paid up to the maximum shown on the Schedule of Benefits. If you incur physician's charges for necessary obstetrical service, provided whether in or out of hospital, you will be paid up to the maximum shown on the Schedule of Benefits for such expense incurred on a customary, usual and reasonable basis.

Maternity Benefits are payable only with respect to a pregnancy which meets one of the following requirements:

- a. The pregnancy had its inception after the effective date of the employee's insurance coverage on his (or her) dependents, provided such employee enrolled for dependent coverage within 31 days after the date he (or she) first became eligible for dependent coverage; or
- b. The pregnancy had its inception 90 or more days after the effective date of the employee's coverage on his (or her) dependents, if the employee enrolled for dependent coverage later than 31 days after the date he (or she) was first eligible for dependent coverage.

If your employment terminates after you have been continuously insured for dependent coverage for nine months, and you are otherwise entitled to receive Maternity Benefits, Maternity Benefits will be paid for the pregnancy which had its inception before the date of your termination, provided that the Group Policy is in effect, and your employer continues to be a sponsor of this Plan. If your employer does not continue to sponsor the Plan, then the Maternity Benefits are not extended.

Part II

Group Major Medical Insurance

Part II is the "coinsurance" portion of the Plan providing benefits for injury, complications of pregnancy, and sickness, except for charges arising from mental and nervous disorders, alcoholism, drug abuse, tuberculosis or kidney disease. The latter are covered as stated under Part III — Group Specified Condition Insurance.

Benefits are payable AFTER SATISFACTION OF THE DEDUCTIBLE. The Deductible, which is an amount of out-of-pocket expense for covered charges which you must pay, is shown on the Schedule of Benefits. It must be satisfied during each calendar year in order for benefits to be payable during the remainder of that year.

Beginning with the first dollar of Major Medical Expenses over and above the deductible, you are eligible to receive the benefits up to the maximums shown on the Schedule of Benefits for covered expenses incurred.

You are eligible to receive benefits for all covered charges you incur for the remainder of the calendar year or until

the Lifetime Maximum Benefit is reached.

If you incur charges for covered expenses during the period October 1 through December 31, the charges may be applied to the satisfaction of your Deductible for the immediately following calendar year.

If you and two of your dependents (or three dependents) each satisfy their Deductible during a calendar year, no further Deductible will be applied to you or any of your covered dependents for covered expenses incurred during the remainder of the calendar year. If you and/or one or more of your covered dependents incur covered expenses resulting from a common accident, only one Deductible will be applied to covered expenses arising from such accident during the remainder of the calendar year. The one Deductible may be satisfied by accumulating the covered expenses incurred by you and/or your dependents on a collective basis. The one Deductible provision will be reapplied in each succeeding calendar year, but only to covered expenses arising from the common accident.

Covered Expenses for Part II

The following charges will be considered covered expenses under Part II if they are incurred in excess of any benefits payable under Part I and if they are incurred in connection with an injury, sickness or complication of pregnancy. Charges made by or for:

- a. A physician's home or office calls;
- b. Services of a registered graduate nurse for nursing care ordered by a physician, provided the nurse is not a member of your family or a person who normally resides in your home;
- c. Professional ambulance service as described in Part I;
- d. X-ray examinations (other than dental x-rays), microscopic or other laboratory tests made for diagnostic or treatment purposes;
- e. Treatment by a physiotherapist;
- f. X-ray, radium, cobalt and radioactive isotope therapy;
- g. Drugs and medicines obtainable only on a physician's prescription and dispensed by a licensed pharmacist;
- h. Blood and blood plasma which is not replaced by you or on your behalf;

- i. Artificial limbs and eyes (except replacement thereof);
- j. Casts, splints, trusses, braces (other than dental braces) or crutches;
- k. Oxygen and rental equipment for the administration of oxygen;
- l. Rental of a wheelchair or hospital-type bed;
- m. Rental of an iron lung or other mechanical equipment for the treatment of respiratory paralysis;
- n. Charges for hospital confinement as defined in Part I;
- o. Charges in connection with dental treatment or conditions provided they arise from accidental injury to sound natural teeth. The accident must occur while insured under the Plan

Part III

Group Specified Condition Insurance

The Plan covers charges incurred for alcoholism, drug abuse, mental and nervous disorders, tuberculosis and kidney disease only as specified in this Part III.

If a person is insured under the terms of Part IV — Group Medicare Companion Insurance, benefits paid under this Part III will be reduced to the extent that benefits for the same charges are paid or payable under Medicare. Any provision for Reinstatement of Lifetime Maximum, Extended Benefit or Conversion Privilege is deleted and does not apply to such a person.

Alcoholism, Drug Abuse, Mental and Nervous Disorders:

- a. The Plan covers inpatient treatment for these conditions for up to 70 days in each calendar year. During that period, the hospital confinement and in-hospital medical benefits described in Parts I and II will be payable on the same basis as for any other condition.
- b. Up to \$500 of charges incurred on an outpatient basis (including hospital outpatient) will be payable during each calendar year for expenses arising from alcoholism, drug abuse, mental and nervous conditions, if the charges are incurred in a Section 51.42 Treatment Center or as a hospital outpatient. These outpatient benefits are not subject to any deductible, coinsurance or pre-existing conditions which may be

part of the Plan. Covered outpatient expenses include only the following: charges for outpatient services provided by, under the supervision of, or on referral from a physician, including partial hospitalization services, prescription drugs, and collateral interviews with patient's families in a hospital or outpatient treatment facility or, if by a physician, at any location.

- c. The charges described in a and b above, which are in excess of the stated maximums and other charges, which would be covered under Parts I and II if incurred for some other condition, will be payable at the rate of 50% up to an Excess Specified Condition Maximum Benefit of \$10,000. This is a lifetime maximum benefit which will be reduced by amounts paid under this Item c but not by amounts paid under Items a or b. Benefits under this Item c are payable on a calendar year basis and are subject to the Deductible Provisions on the same basis as any condition covered under Parts I and II. This Item c does not apply to any person insured under the terms of Part IV — Group Medicare Companion Insurance.

Tuberculosis

The Plan covers inpatient and outpatient hospital charges as described in Parts I and II, and outpatient dispensary charges for a continuous period of up to 90 days following the date you first incur a covered charge due to tuberculosis. This coverage is not subject to any pre-existing condition limitation, deductible or coinsurance provision which may otherwise be part of the Plan.

Kidney Disease

The Plan covers hospital charges, including charges for kidney transplant and dialysis, as described in Parts I and II, up to a maximum of \$30,000 per calendar year. The Plan does not cover kidney disease charges for which you are entitled to receive Medicare benefits.

Note: Unless specifically noted, the conditions, limitations and exclusions applicable to other injuries or sicknesses also apply to the Specified Condition Benefits.

Limitations And Exclusions For Parts I, II, III and IV

Benefits are not payable and covered charges do not include any expense:

- a. Due to an injury or sickness resulting from attempted suicide while sane or

insane, or from intentional self-inflicted injury or bodily harm;

- b. For routine physical examinations;
- c. Due to an injury or illness resulting from war or any act of war;
- d. Due to any injury or illness which arises out of any employment other than self-employment or employment for an employer who is not subject to any Worker's Compensation Law or any similar law;
- e. Due to participation in a riot, or an attempt by the covered person to commit an assault or felony;
- f. Unless a charge is made that the covered person is legally required to pay without regard to the existence of insurance;
- g. Unless the expense is necessary for diagnosis or treatment of a sickness, injury, complication of pregnancy or maternity and is recommended and approved by a physician;
- h. Charged by a person who ordinarily resides in your home or who is a member of your family;
- i. For any dental care or treatment except as specifically described;
- j. Not necessary for care and treatment of a covered condition or charged in excess of the customary, usual, and reasonable charge for the service or supplies;
- k. For eye or hearing examinations, (other than examinations necessary for the diagnosis or treatment of an accidental injury sustained while insured under the Group Policy) or for hearing aids or the fitting or repair of any hearing aid, eyeglasses, or contact lenses;
- l. Due to any plastic or cosmetic surgery except to the extent necessary for the repair or alleviation of damage caused solely by injury which occurred while you were insured under the Plan or for the correction of congenital deformities of your newborn dependent;
- m. Due to pregnancy, complications caused by pregnancy or childbirth except as specifically described;
- n. To the extent that benefits are payable for such expenses under a policy of hospital-surgical insurance issued by the Insurer in accordance with a Conversion Privilege.

- o. Due to a pre-existing condition, if the Schedule of Benefits indicates that they apply to you.
- p. For prescription drugs, unless recommended, approved and dispensed by a registered (and/or licensed) pharmacist. This does not include any experimental drug or medicine or any substitute approved by the Secretary of Health, Education and Welfare.

Extended Benefit

(For Persons Covered Under Parts I, II and III)

If you are totally disabled on the date your coverage as described in Parts I, II, or III terminates, the Insurer will continue to provide benefits until the earliest of:

- a. The date you cease to be totally disabled;
- b. The date you receive benefits equal to your maximum benefit;
- c. The end of the period of twelve consecutive months immediately following the date your termination occurred.

Note: The extension of benefits applies only to charges incurred as a result of the total disability which existed on the date of your termination. No extension is provided for persons covered under parts III and IV.

Coordination of Benefits

To alleviate the problem of over-insurance and the resulting increase in the cost of medical insurance, the health benefits described in this Certificate (excluding Group Weekly Disability Income Insurance) will be coordinated with health benefits provided under other group plans. These benefits will be reduced under certain circumstances when an individual is covered both under the Plan described in this Certificate and other Plans defined below which provide similar benefits.

It is intended that the individual will be fully reimbursed for allowable expenses under the various plans to the extent that his combined benefits equal 100% of the total allowable expenses.

For this purpose a Plan is one which covers medical or dental expenses provided by group, franchise hospital or medical service or other coverage arranged through any employer, trustee, union, employee benefit or other association or any governmental pro-

gram or coverage required by statute; or any coverage sponsored by or provided through an educational institution except that coordination does not apply to Blanket Student Accident Insurance provided by or through an educational institution).

The Group Policy contains full details of the coordination provision. Included are definitions of allowable expenses and the claim determination period. The Group Policy also prescribes the order of benefit determination if an individual is insured by more than one Plan including similar coordination provisions. You may obtain additional information about this provision from the Insurer.

Maximum Benefit

Your Lifetime Maximum Benefit is shown on the Schedule of Benefits. Note that there is a Lifetime Maximum Benefit for Parts I, II and III combined and a separate Lifetime Maximum Benefit for Part IV. Benefits will not be paid in excess of the applicable Lifetime Maximum Benefit, except if you receive benefits under Parts I and II, your Maximum Benefit may be restored in any one of these ways: (1) if you receive benefits of \$1,000 or less in any calendar year, the amount of benefits you received will automatically be restored to your Maximum Benefit on the following January 1; (2) if you receive benefits in excess of \$1,000 in any calendar year, \$1,000 will automatically be restored to your Maximum Benefit on the following January 1; or (3) you may submit evidence of insurability and if it is approved by the Insurer, your full Maximum Benefit will be restored on the date approval is given.

Part IV

Group Medicare Companion Insurance

(For persons who are eligible to enroll for Medicare)

The benefits described in Part IV apply when: (1) the date you become insured, if you are eligible for Medicare on that date, or (2) the date you become eligible for any coverage under Medicare. On the date Part IV of the Plan is applied to you the benefits described in Parts I, and II terminate and your coverage for medical care, treatment and services will only be as described in Parts III and IV. The fact that you are insured under Part IV will not act to terminate Part I, II and III benefits for any of your dependents, unless a dependent has also reached one of the dates specified in the first sentence.

You should note that if your employer's Plan includes "Extension of Benefits" (for Parts I, II and III) a "Hospital and Surgical Conversion Privilege" or a "Coordination of Benefits" provision these do not apply to anyone insured under Part IV.

When a person becomes covered under the terms of Part IV, his Group Specified Condition Insurance (as described in Part III) will continue in effect, with these changes: benefits payable under Part III will be reduced to the extent that benefits for the same charges are paid or payable by Medicare; the Excess Specified Condition Benefit described in Item (c) under alcoholism/drug abuse/mental or nervous disorders is deleted and no longer available; benefits payable under Part III will not act to reduce your Lifetime Maximum Benefit for Part IV but rather will be applied to reduce the Lifetime Maximum Benefit for Parts I, II and III combined remaining available to you on the date you become covered under the terms of Part IV.

Benefits for Part IV

Benefits are provided only for the covered expenses described in Part IV and incurred as a result of an injury or sickness other than alcoholism, drug abuse, mental or nervous disorders, tuberculosis or kidney disease. If you are insured under Part IV, you have a Lifetime Maximum Benefit of \$15,000. If your employer's Plan includes a provision for restoration of Maximum Benefit, that provision does not apply to your Lifetime Maximum Benefit under Part IV.

"Spell of Illness" means that period of time commencing with the first day that the covered person is confined in a hospital as the result of sickness or accidental bodily injury and ending after 60 consecutive days during which the individual is not hospital confined.

"Initial Medicare Deductible" means the inpatient hospital deductible under Medicare which is determined by the Secretary of Health, Education and Welfare as being applicable for a given calendar year and which is used to determine the amount payable on behalf of a covered person eligible under Medicare for inpatient hospital services arising from any Spell of Illness.

Covered Expense for Part IV

The following charges will be considered as covered expenses:

1. Hospital charges which are incurred while confined in a hospital as a resident patient, for daily room and

board and medical care and treatment exclusive of charges for professional services, for each Spell of Illness, subject to the following maximums:

- a. The Initial Medicare Deductible during the first 60 days of hospital confinement, plus charges made for whole blood (not to exceed 3 pints nor \$25.00 per pint), provided, however, that payment will not be made for whole blood when replaced on behalf of a covered person.
 - b. 25% of the Initial Medicare Deductible per day of confinement for each day commencing with the 61st and ending on the 90th day.
 - c. 50% of the Initial Medicare Deductible incurred on and after the 91st day of confinement while receiving benefits under the lifetime reserve and 80% of such hospital charges incurred on and after the 91st day of confinement, provided, however, that no more than 80% of the average semi-private room rate charged by the hospital in which confined shall be considered as Covered Expense, with respect to daily room and board charges.
2. 80% of all charges made by a Registered Nurse (R.N.) subject to a maximum payment of \$16.00 per eight-hour shift and not exceeding a maximum of 250 eight-hour shifts during any one calendar year.
 3. Expenses incurred while confined in a Skilled Nursing Facility qualified under Medicare, subject to a maximum of 12.5% of the Initial Medicare Deductible per day of confinement. This benefit is payable starting with the 20th day and ending with the 100th day of confinement.
 4. The first \$60 plus 20% of the additional medical treatment incurred in any calendar year for:
 - a. Charges in the out-patient department of a hospital for diagnostic services, x-rays, laboratory tests, radium isotope therapy and ambulance services when the patient's condition warrants.
 - b. Charges by a physician or surgeon for X-rays, laboratory tests and other diagnostic services when the patient's condition warrants.
 - c. Services of a physician or surgeon for medical treatment while hospital confined.

5. Additional medical expenses incurred for treatment of sickness or injury in excess of \$60 during each calendar year subject to the following maximums:

- a. 20% of physicians and surgeons charges while non-hospital confined;
- b. 80% of charges for drugs and medicines required while non-hospital confined which require the written prescription of a physician and which must be dispensed by a licensed pharmacist.

In no event shall covered expenses include charges for services, treatments, or supplies which are not necessary for the care and treatment of the sickness or accidental bodily injury, nor shall charges be included which are, in the opinion of the Insurer, unreasonably priced or in excess of customary, usual and reasonable amounts. For any services, treatments or supplies which the Insurer considers unreasonably priced, the amount to be considered as covered expense shall be the amount customarily charged by qualified persons or institutions in the area in which rendered to persons of like financial means as the covered person who do not have insurance covering such sickness or accidental bodily injury.

Limitations for Part IV

In addition to the Limitations And Exclusions for Parts I, II, III and IV, the following limitations apply only to Part IV:

1. If benefits or services are provided by: (1) group insurance coverage; (2) employer sponsored hospital or medical service organizations, group practice, individual practice, and other pre-payment coverage; (3) any coverage under labor-management trustee plans or employee benefit organization plans; (4) any coverage under governmental programs; and (5) any coverage required or provided by any statute, then they will not be covered charges under Part IV.
2. Drugs and medicines administered by a physician when considered incidental to the treatment of a sickness or injury are not considered covered charges.

Conversion Privileges Hospital and Surgical

A hospital and surgical conversion policy is also available without medical examination provided the Group Policy is in force when you are no longer eligible for insurance. You have 31 days after termination of your group insurance to make application and pay the required premium for such individual or family policy. The conversion policy will be effective on the day after your Group Medical Insurance terminated, provided you enroll and pay the first premium within 31 days after such termination. This conversion policy is available to your dependents in the event of your death, or at the end of the survivorship continuation if that is provided in accordance with (j) of the Termination of Insurance provisions. In addition, any of your children who cease to be eligible for coverage under the Group Policy may convert to an individual hospital surgical policy.

In the event of your legal separation or divorce, your covered dependent spouse may exercise the conversion privilege with respect to herself alone, or with respect to herself and any covered dependent children who cease to be your dependents because of the divorce or separation.

Employee and Dependent Group Life Insurance

You may convert your employee Group Life Insurance to an individual policy of life insurance if: (1) your employment terminates; (2) you transfer to a class not eligible for Group Life Insurance; (3) your waiver of premium continuation terminates solely due to your attainment of age 65; or (4) your insurance is reduced due to attainment of a specified age. In the case of (4) you may convert only the amount of insurance which was lost due to the operation of the age reduction. Otherwise, you may convert the full amount of your Group Life Insurance.

A dependent may convert his Dependents Group Life Insurance to an individual policy of life insurance if: (1) your employment terminates; (2) you transfer to a class not eligible for Dependents Group Life Insurance; (3) a dependent ceases to qualify as a dependent under the Plan; or (4) you die.

Additionally, a LIMITED CONVERSION PRIVILEGE is available to persons who have been insured under the Group Policy for five continuous years if: (1) the Group Policy terminates; (2) the Group Policy is amended so as to terminate the

eligibility of yourself or your dependents for life insurance benefits; or (3) your employer terminates his participation in the Plan. The amount that may be converted may not exceed the LESSER of: (1) the amount that is terminated less any amount of Group Life Insurance for which you or your dependent become eligible within 31 days after termination under the Plan; or (2) \$2,000 except that this may be \$5,000 if you agree to pay the Insurer's customary conversion charge for the amount in excess of \$2,000.

An individual policy may be issued of any one of the forms, except term insurance, then customarily being offered by Wisconsin Employers Insurance Company. The policy will not include disability or other supplementary benefits. The premium is based on the current Wisconsin Employers Insurance Company rate according to the form and amount of the policy and you and/or your dependents attained age on its date of issue. The effective date is the thirty-second day following the date group insurance terminates.

An individual policy will be issued only if written application and payment of the first premium is made within 31 days after the date of termination of your and/or your dependent's insurance. No evidence of insurability is required. Conversion forms may be obtained through your employer.

If you or your dependent dies during the period of time conversion is available, the Insurer will pay to the appropriate beneficiary the amount of insurance which could have been converted whether or not application for conversion has been made.

General Provisions Not Applicable to Group Life Insurance Notice of Claim

Written notice of a Group Accidental Death And Dismemberment or Group Weekly Disability Income claim must be given the Insurer within 30 days after the occurrence or commencement of any loss covered by the Group Policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the claimant to the Insurer at its Home Office, De Pere, Wisconsin 54115, with information sufficient to identify the primary insured will be deemed proper notice to the Insurer.

Claim Forms

The Insurer, upon receipt of a written notice of a Group Accidental Death And Dismemberment or Group Weekly

Disability Income claim, will furnish to the claimant forms for filing proof of loss. If the forms are not furnished within 10 days after receipt of such notice, the claimant will be deemed to have complied with the requirements of the Group Policy as to proof of loss upon submitting, within the time fixed in the Group Policy for filing proof of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

Proof of Loss

Written proof of loss must be furnished to the Wisconsin Employers Insurance Company office at De Pere, Wisconsin within 90 days after the date of such loss.

Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, not later than one year from the time proof is otherwise required.

Time of Payment of Claims

Indemnities payable under the Group Policy will be paid immediately upon receipt of due written proof of such loss.

Payment of Claims

The Group Accidental Death And Dismemberment Insurance death benefit is payable to the primary insured's beneficiary, any other indemnities unpaid at his death shall be payable to the primary insured's estate. All other indemnities will be payable to the covered person.

If any indemnity of the Group Policy shall be payable to the estate of the primary insured, the Insurer may pay such indemnity, up to an amount not exceeding \$1,000 to any relative by blood or connection by marriage of the insured who is deemed by the Insurer to be equitably entitled thereto. Any payment made by the Insurer in good faith pursuant to this provision shall fully discharge the Insurer to the extent of such payment.

Subject to any written direction of the primary insured in the application or otherwise, all or a portion of any indemnities provided by the contract may at the Insurer's option and unless the primary insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the services be rendered by a particular hospital or person.

Physical Examination

The Insurer at its own expense shall have the right and opportunity to examine the person of the covered person when and as often as it may require during the pendency of a claim.

Legal Actions

No action at law or in equity shall be brought to recover on the Group Policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of the Group Policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

Conformity With State Statutes

Any time limitation of the Group Policy with respect to giving notice of claim or furnishing proof of loss which, on its effective date, is in conflict with the statutes of the state in which the primary insured resides on such date is amended to conform to the minimum requirements of such statutes.

General Provisions Applicable to All Coverages Incontestability

No statement, except fraudulent misstatements, made by any person insured under the Group Policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by the Policyholder, participating employer or the primary insured and a copy of such instrument has been furnished to such primary insured or to his beneficiary.

Use of Personal Pronoun

The Masculine personal pronoun is used solely as a grammatical convenience. It includes the feminine where appropriate. Similarly, the singular personal pronoun includes the plural. In the description of medical coverages, the pronoun "you" applies to a dependent as well as an employee, unless the context clearly indicates otherwise.

Assignment

The insurance and any benefits under the Group Policy are not assignable for collateral purposes. All other assignments must be submitted to, and approved by, the Insurer. No such assignment is binding upon the Insurer until an approved, fully executed copy of

the assignment is received at its Home Office. Approval of any assignment by the Insurer does not constitute any representation or warranty as to the legal validity or legal effect of such assignment.

Company's Right of Recovery

The Insurer is not liable under the Group Policy to the extent to which payment as a judgement, settlement, or otherwise is made to a primary insured (or to the primary insured on behalf of a covered dependent) by a person considered responsible for causing the sickness or injury of a covered person, or by such person's insurer. If, after payments have been made to a covered person by the Insurer in accordance with the Group Policy, it is determined that benefits have been provided or payments made by such a responsible third party, then the Insurer is entitled to a refund from the covered person of the amount paid under the Group Policy had the determination of third party responsibility been made prior to claim payment.



**WISCONSIN EMPLOYERS
INSURANCE COMPANY**

**Group Insurance
Certificate**

WEG Boulevard • P.O. Box 1100 • De Pere, WI 54115 • (414) 336-1100

Pers 19 TRAVEL AND PER DIEM. It is the policy of this Administration to offer Travel and Per Diem expenses to those employees who are required to absent themselves from their normal place of duty for official business.

- (1) Rates. Employees will be reimbursed for per diem and travel based upon the following rates:
 - a. Per Diem. The basic per diem rate is \$39.00/
 - b. Travel Expenses. Travel expenses will be reimbursed only for the mode of travel authorized.
 1. Private Auto \$.17 per road mile
 2. Public Conveyances Actual Cost
- (2) Rate Adjustments. Per diem rates will be adjusted for defined period of travel as shown below:
 - a. For continuous travel of more than 24 hours.
 1. The calendar day (midnight to midnight) will be the unit.
 2. For fractional parts of a day at the commencement or ending of such continuous travel, constituting a travel period, one fourth of the rate for a calendar day will be allowed for each period of six hours or fraction thereof.
 - b. For continuous travel of less than 24 hours constituting a travel period, such period will be regarded as commencing with the beginning of the trip and ending with the completion thereof, and for each six hours portion of the period or fraction thereof, one-fourth of the rate for a calendar day will be allowed, provided that no per diem will be allowed when the departure is after 0800 hours and the return on the same day is prior to 1800 hours, or travel period is ten hours or less on the same day.
- (3) Per Diem and Travel Rules. The following rules will be applicable to the above policy:
 - a. No employee will be paid for travel to and from work.
 - b. Receipts must be presented to obtain reimbursement, except taxi fares or less than \$5.00.

- c. Official telephone calls and taxi fares plus any other necessary business expense will be reimbursed at actual cost.
 - d. An employee who is on a per diem basis will not be given compensatory time for hours worked beyond the normal working hours.
- (4) For travel to cities with a higher cost of living, the rates that apply can be obtained through the Personnel Office.

MENOMINEE INDIAN TRIBE OF WISCONSIN

MILEAGE SHEET

NAME _____ **DATE SUBMITTED**

DEPT _____

[illegible]

ANY RECEIPTS FOR MEALS OR

TOTAL MILES

LOGGING MUST BE ATTACHED

APPROVED

DATE-

MILEAGE SHEET CONTINUED.

[illegible]

MENOMINEE INDIAN TRIBE OF WISCONSIN

Per Diem Request

DATE: _____

Payable to: _____

Amount due: _____

Program: _____

Purpose and/or Authorization: _____

_____DepartureTime

_____ AM - PM

_____ Date

ReturnTime

_____ AM - PM

_____ Date

Employee's Signature_____
Supervisor's Signature

NOTE: If Seminar or Workshop - attach flyer.


**NATIONAL CENTER
FOR STATE COURTS**

 300 Newport Avenue
 Williamsburg, Virginia 23185
 (804) 253-2000

**TRAVEL ADVANCE
REQUEST**

VOUCHER NO. _____

ACCOUNTING USE ONLY

Prepared by _____ Date _____

Reviewed by _____ Date _____

Approved by _____ Date _____

Date Prepared _____

Employee Name _____ Employee No. _____

Office _____

For _____

(Date, Destination & Purpose of Trip)

ESTIMATE OF EXPENSES

Estimated Ground Transportation

Per Diem \$ _____ x _____ Days _____ =

Other: _____

SUBTOTAL

x 80%

TOTAL

REMARKS AND SPECIAL CONSIDERATIONS

In consideration of funds being advanced for anticipated travel expenses, I agree to submit a properly completed travel expense voucher detailing all related expenses within sixty days. In the event that a travel voucher is not submitted within the sixty-day period, or the advance (including any ticket advances) is not otherwise repaid, I understand and agree that the Center may withhold the amount of the advance from any salary or other amounts that may be due to me for services or expenses.

EMPLOYEE SIGNATURE

Employee Signature

Date

AUTHORIZATION AND APPROVAL

Supervisor's Signature

Date

AO 11-3/80

7/15/82

Submit original and yellow copy to Office of the Controller


**NATIONAL CENTER
FOR STATE COURTS**

 300 Newport Avenue
Williamsburg, Virginia 23185
(804) 253-2000

TRAVEL EXPENSE VOUCHER

VOUCHER NO. _____

Date Prepared _____ Page _____ of _____

Name _____ Employee No. _____

Street _____ Telephone _____

City, State _____ Zip Code _____

 Claim must be
filed within
60 Days of
return!

ITINERARY AND PURPOSE (complete all sections)

TIME	DATE STARTED	ORIGIN	DESTINATION	TIME	DATE ARRIVED	PURPOSE OF TRIP
AM PM				AM PM		
AM PM				AM PM		
AM PM				AM PM		
AM PM				AM PM		

ITEMIZATION OF EXPENSES

DAY OF WEEK	DATE									TOTALS
MEALS (Deduct meals provided)										
*LODGING (including porters)										
SUBTOTAL MEALS, LODGING, ETC.										
*CAR RENTAL/GAS										
PARKING AND TOLL										
PLANE/TRAIN/BUS (Explain First Class)*										
PREPAID AIRLINE TICKET*										
BUS-TAXI to & from Airport/Motel/Business (including tips)										
**PERSONAL AUTO (1¢ @ 25¢ per mile)										
SUBTOTAL TRANSPORTATION										
BUSINESS PHONE										
OTHER (Specify)										
SUBTOTAL OTHER EXPENSES										
GRAND TOTALS										

NON-REIMBURSABLE — EXPENSES NOT REIMBURSED BY NCSC (Accounting Use Only):

MEALS AND LODGING										
TRANSPORTATION										
OTHER										
TOTAL NON-REIMBURSABLE										

NOTE

1. *Attach Original Receipts
2. **Indicate number of miles & ().
3. Non-Reimbursable expenses columns are for expenses not covered by NCSC. — Check for billing to other organizations.

LESS CASH ADVANCE

LESS PREPAID TICKETS

NET REIMBURSABLE

PROJECT IDENTIFICATION SECTION — Please Indicate Specific Expenses

FUND PROJECT NO.	PROJECT NAME	DATES	AMOUNTS

EXPLANATIONS _____

CLAIMANT'S SIGNATURE *Both Signatures Required*

 Claimant's Signature Date

AUTHORIZATION AND APPROVAL

 Supervisor's Signature Date

INSTRUCTIONS FOR COMPLETION OF TRAVEL VOUCHER

GENERAL The National Center will reimburse staff members and consultants for travel expenses on a per diem basis for meals and lodging and on an actual expense basis for transportation and other incidental expenses related to travel. These travel policies apply to all travel performed by National Center staff and consultants regardless of source of funding. Travel vouchers must be completed within 60 days upon completion of a trip. Expenses of two or more staff members should not be combined on one voucher (taxi fares excepted). Staff members should not submit their expenses to outside agencies who in turn bill the National Center.

RECEIPTS Original receipts are required for lodging, transportation via a common carrier, rental cars, registration fees and any other unusual item for which reimbursement is claimed. Receipts are normally not required for meals, tips, taxi fares or telephone charges.

MEALS Meals will be reimbursed on a per diem basis up to \$20.00 per 24-hour day. Per diem entitlement is based on 6-hour quarter days commencing at 12:01 a.m. To be eligible for per diem on meals, staff members must be in a travel status a minimum of 10 hours during a calendar day, except when the time in a travel status is at least six hours in length and either (1) commences prior to 6:00 a.m. or (2) terminates after 8:00 p.m.. Each quarter day or portion thereof (minimum of 30 minutes) which qualifies for per diem support will be paid at the rate of \$5.00. Travel is assumed to commence when the traveler leaves home, office, or other designated work station to begin a trip, and terminates upon return to the work station, office, or home. Per diem for meals covers all expenses to and from the places where meals are taken. Where meals are provided to the traveler without charge or not taken due to schedules, the daily per diem that would otherwise be claimed should be reduced as follows: Breakfast, \$4.00, Lunch, \$5.00 and Dinner, \$11. All travel vouchers should show the date, time and point of departure, and date, time and point of return for each trip for which per diem is claimed. The per diem-rate for meals applies in all locations without exceptions.

LODGINGS The National Center will reimburse staff members and consultants for actual lodging expenses on a per diem basis up to \$50.00 for each night's lodging that is required as part of official travel. Original receipts are required for purposes of verifying the amount paid for lodging and for verifying the itinerary of the traveler, and will be used as the basis for reimbursement. The reimbursement for lodging may include all taxes and special assessments. Baggage handling/transfer fees or fees and tips for room service, porters, baggagemen, bell-boys, hotel maids, and other personal service personnel are to be included in the \$50.00 per diem limit. Telegrams and telephone calls reserving hotel/motel accommodations, laundry, or cleaning and pressing of clothing are not reimbursable.

DEVIATIONS FROM THE DAILY LIMITS In certain instances where National Center staff members are assigned to travel to areas or functions where minimum costs of lodging exceed the \$50.00 daily limit, the affected staff member should submit a request in writing prior to the trip, if possible, via the supervising deputy, regional or associate director, to the Deputy Director for Administration for waiver of the daily limit for that trip.

TRANSPORTATION Transportation expenses will be reimbursed as follows:

AIRFARE Y-Class or A-Class via schedules common carriers over the most direct route. First class air travel is not allowed except where Y-Class is not available and it would be impractical to take another flight.

BUS, LIMOUSINE, TAXI Actual expenses are allowable using the most appropriate mode in the circumstances. Receipts, if available, should be attached to the travel claim. The use of such conveyances is allowed for travel to and from airports; between hotels and work stations; and between work stations. Such expenses are not reimbursable when utilized to and from places where meals are taken except to the extent of per diem allowances for lodging.

RENTAL CARS Actual expenses are allowable where no other form of ground transportation would be suitable. Efforts should be made to obtain the smallest car practicable in the circumstances. If non-business use of the car is made, the amount claimed should be pro-rated according to the percentage of such non-business use.

PERSONAL AUTO Mileage of personal autos is reimbursable at the rate of \$.25 per mile. The point of origin and destination for all auto mileage should be noted on the travel claim. Where personal autos are utilized for trips that could have been made via scheduled airlines, the reimbursement will be limited to equivalent round trip Y-Class airfare. Indicate the beginning and end point of the travel along with the total number of miles traveled taken from the vehicle's odometer. Staff members are cautioned to review individual insurance policies to ensure coverage for business use. The National Center assumes no liability for casualty losses sustained by staff members or consultants to personal property or equipment being utilized in National Center work.

EXPENSES NOT COVERED Commonly incurred travel expenses which are not specifically reimbursable include, but are not limited to, liquor; entertainment; travel insurance; personal telephone charges; child, pet or household care during the staff member's absence; losses relating to theft, casualty, or mysterious disappearance of personal effects (including cash, credit cards and airline tickets, etc.); and fines and penalties for actions or inactions of the traveler.

NON REIMBURSABLE EXPENSES If actual expenses for meals and lodging are listed on this Travel Expense Voucher and the daily total of such expenses exceeds the amount reimbursable under the per diem system, the excess charge may be entered in this section in order to arrive at the amount of expected reimbursement. If actual expenses are claimed on this voucher, and those actual expenses are less than the per diem allowances, the amounts reimbursed will be the amounts claimed. If the per diem allowances are claimed, those amounts will be reimbursed. Adjustments to the amount of reimbursed expenses on this Travel Expense Voucher that are made by the Accounting Department prior to payment will also be entered in this section.

Pers 20 HOLDIAYS. It shall be the policy of this Administration to observe the following holidays each year:

New Years Day (January 1)

Good Friday Afternoon (Preceding Easter)

Memorial Day (Last Monday in May)

Independence Day (July 4)

Labor Day (First Monday in September)

Thanksgiving Day (Fourth Thursday in November)

Afternoon of December 24

Christmas Day (December 25)

Afternoon of December 31

An additional holiday will be granted the employee known as a personal or floating holiday. It can be used for special occasions. Along with the observance of these holidays, the following rules and regulations shall apply:

- (1) The special or floating holiday shall be granted only on consent of the immediate supervisor and after 30 days of continuous employment.
- (2) If a holiday occurs while an employee is on vacation, the employee is paid for the holiday and may add an extra day to his vacation.
- (3) If a holiday occurs while an employee is on leave of absence, the employee is not paid for the holiday unless they return from the leave and work the first scheduled working day following the holiday.
- (4) Holidays falling on a Saturday will be observed on the preceding Friday and holidays falling on a Sunday will be observed on the following Monday.
- (5) To be paid for a holiday, the employee must be at work on the day before and the day after the holiday unless arrangements have been made by the employee with the immediate supervisor.

Pers 21 ALCOHOL AND DRUG DEPENDENCIES. It shall be the policy of this administration to recognize alcoholism and other drug dependencies as an illness which can be treated. The purpose of this policy is to ensure that any employee with these illnesses will receive the same consideration and offer of treatment that is not extended to employees with other illnesses.

- (1) Definition. Alcoholism and Drug Dependencies is an illness that is to be treated as any other illness may be treated, i.e., the individual shall seek treatment and medical help as required to subdue such illness.
- (2) Employer's Responsibility. It shall be the responsibility of all Department Heads and Supervisors to implement this policy. The respective supervisor shall inform their employee's of the Alcohol and Drug Program. They shall also inform an employee with an alcohol or drug problem that their job is not in danger if he/she voluntarily requests medical treatment for his/her illness.
- (3) Employee's Responsibility. It shall be the employee's responsibility to comply with any treatment or prescribed therapy for such illness. If the employee refuses treatment, the respective supervisor will handle the situation accordingly if the problem affects the job performance of the individual.
- (4) Confidentiality. It shall be the responsibility of the employer to keep all information on Drugs and Alcoholism regarding our employees in a most confidential manner.

Pers 22 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM. It is the policy of this Administration to have a sound employment practice that is consistent with Federal Rules and Regulations on equal employment opportunities. To ensure that this is implemented, the Personnel Manager is responsible for the Equal Employment Opportunity Program. The following is our General Policy on Equal Employment, further information can be found in the Official Affirmative Action Program:

AFFIRMATIVE ACTION POLICY

It is our policy to provide equal employment opportunities to all qualified individuals without regard to their race, color, religion, national origin or sex in all personnel actions, including recruitment, evaluation, selection, promotion, compensation, training, and termination.

It is also the policy of this Administration to promote the realization of equal employment opportunity through a continuing program of specific practices designed to ensure the full realization of equal employment without regard to race, color, religion, national origin or sex.

Tribal members shall be hired if they qualify in accordance with Public Law 93-638, Section 271.44, entitled "Indian Preference," and Section 273.45, entitled "Indian Preference."

Pers 23 SALARY ADMINISTRATION. All employees of this Administration will be treated fairly and equitable when it comes to the administering of salary. The following shall be the policy on salary administration:

- (1) After an employee completes their probationary period of six (6) months, they will be given an evaluation of their performance for the probationary period. If their performance merits an increase, the Supervisor will consult with the Personnel Manager and an agreement will be made between the Supervisor and the Personnel Manager as to the amount of the increase.
- (2) All employees will be reviewed annually on their performance and the salary administration. In the case of a new employee, the review will be twelve (12) months from the six (6) month evaluation date.
- (3) The percent of increase shall be determined by the evaluation given the employee. The following categories shall be the basis for the percent of increase allowed the employee:
 - a. OUTSTANDING. Performance is exceptional. It is consistently beyond the expected level of the job. The individual handles a large work load with a high degree of skill. Initiative and foresight are demonstrated. Problems are identified and solutions developed.
 - b. SUPERIOR. Performance clearly surpasses the normal expectations of the job. The individual identifies problems and helps in developing solutions. Initiative and foresight are evident.
 - c. COMMENDABLE. Performance is good, dependable, and capable. The full scope of job duties and responsibilities are consistently met.
 - d. ACCEPTABLE. Performance meets the minimum requirements of the position.

CHAPTER 5: Court Classification

- A) Chief Justice
- B) Associate Justice
- C) Tribal Judge
- D) Court Administrator/Clerk
- E) Deputy Court Clerk
- F) Secretary
- G) Probation Officer
- H) Bailiff
- I) Tribal Prosecutor

RECOMMENDATION 11

THE COURT SHOULD CONDUCT A STAFFING NEEDS ANALYSIS AND DEVELOP
APPROPRIATED PERSONNEL CLASSIFICATION SYSTEM AND SALARY SCHEDULES.

The Chief Justice and court staff at the Menominee court expressed interest in the development and implementation of a complete personnel system including classification and pay schedules. Court staff are tribal employees paid from BIA contract monies with salaries set by the tribal council. Although the tribal constitution mandates use of the merit principle in hiring and promotions, no documented system exists for meeting those requirements. Requests for job descriptions revealed that they do not exist for all positions or are inadequate.

The project staff observed that the Chief Justice is currently performing many of the administrative duties which could be assumed by a court administrator. These duties or tasks could be delegated to an administrator. The chief clerk of court has already been assuming some of the duties of a court administrator. An analysis might reveal that the present chief court clerk could assume the expanded duties of a court administrator. New classification and salary schedules would have to be adjusted to reflect increased duties and responsibilities.

It is the Center's recommendation that an appropriate personnel system be developed and implemented. Job descriptions with qualification requirements should be created for all positions. A salary schedule and uniform method of evaluation (including frequencies) should be created to conform with tribal constitution requirements. This effort would require desk audits to determine duties performed by all personnel, and preparation of job descriptions and minimum qualifications for all positions. Salary schedules should be developed in comparison to similar positions within tribal government.

SALARIES FOR COURT PERSONNEL

<u>Title</u>	<u>Salary</u>
Chief Justice	\$18,190.00
Associate Justice (P/T)	1,200.00 (\$50/day)
Trial Judge	12,000.00
Prosecutor	13,199.83
Assistant Prosecutor	\$5/hour (as needed)
Clerk of Court	12,355.20
Secretary/Clerk	9,360.00
Bailiff	8,320 (\$4/hour)

Salaries for tribal secretarial staff:

Secretaries	\$3.50-4.75 hour
Janitors	\$3.75-4.75 hour
Bookkeepers	\$4.25-5.25 hour

*The tribal personnel director is presently developing a salary classification schedule for program directors. Grades range from 8-16, salaries from \$12,500-\$30,500.

<u>Grade</u>	<u>Minimum</u>	<u>Maximum</u>
16	22,500	30,500
15	21,250	28,750
14	20,000	27,000
13	18,750	22,250
12	17,500	23,500
11	16,250	21,750
10	15,000	20,000
9	13,750	18,250
8	12,500	16,500

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

ASSOCIATE JUSTICE

GENERAL DESCRIPTION OF POSITION

The incumbent is appointed by the Menominee Tribal Legislature for a four (4) year term. A Supreme Court Justice hears cases on appeal from the tribal court and hears original trials as assigned by the Chief Justice.

EXAMPLES OF DUTIES

- Hears appeals from the tribal court, as part of a two (2) member panel (except when the justice heard the case in the tribal court).
- If designated by the Chief Justice, as Associate Justice may act as Chief Justice in the absence of the Chief Justice.
- Arbitrates disputes, instructs juries, litigants or court personnel, and administers judicial processes.
- Examines evidence in criminal cases to determine if evidence will support charges.
- Listens to presentation of cases, rules on admissibility of evidence and methods of conducting testimony.
- Instructs juries on applicable law and directs juries to decide from evidence presented.
- Sentences defendants in criminal cases (including convictions by a jury) in accordance with Tribal Codes and Ordinances.
- Issues or directs issuance of court documents, subpoenas, warrants, summons, writs, judgments, decrees, and other legal documents relating to the Tribal Judiciary.
- In the absence of the court clerk, may perform the clerk's duties and may receive cash bail or bonds whenever the 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.

- Responsible for keeping abreast of current Codes and Ordinances and be able to interpret said provisions.
- Participates in relevant seminars and workshops pertaining to law and judicial operations.
- Performs wedding ceremonies.
- Performs such other tasks as assigned by the Chief Justice.

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 display a high level of judgment and proficiency relating to court cases.

2. Supervisory Control:

With regards to administrative matters, works under the direction and supervision of the Chief Justice. Incumbent has independent authority, judgment and decision on matters relative to court cases.

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

TRIBAL COURT JUDGE

GENERAL DESCRIPTION OF POSITION

The incumbent is appointed by the Menominee Tribal Legislature for a two (2) year term. A tribal judge is primarily responsible for the adjudication of cases in the Tribal Court. However, on appropriate occasions may serve as a justice on the Supreme Court.

EXAMPLES OF DUTIES

- Arbitrates disputes, instructs juries, litigants or court personnel, and administers judicial processes.
- Examines evidence in criminal cases to determine if evidence will support charges.
- Listens to presentation of cases, rules on admissibility of evidence and methods of conducting testimony.
- Instructs juries on applicable law and directs juries to decide from evidence presented.
- Sentences defendants in criminal cases (including convictions by a jury) in accordance with Tribal Codes and Ordinances.
- Issues or directs issuance of court documents, subpoenas, warrants, summons, writs, judgments, decrees, and other legal documents relating to the Tribal Judiciary.
- In the absence of the Court Clerk may perform the Clerk's duties and may receive cash bail or bonds whenever the Clerk or other authorized persons is not available.
- Responsible for keeping abreast of current Codes and Ordinances and be able to interpret said provisions.
- Participates in relevant seminars and workshops pertaining to law and judicial operations.
- Performs wedding ceremonies.

- Performs such other tasks as assigned by the Chief Justice.

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 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 display a high level of judgment and proficiency relating to court cases.

2. Supervisory Control:

With regards to administrative matters, works under the direction and supervision of the Chief Justice. Incumbent has independent authority, judgment and decision on matters relative to court cases.

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 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.



Code of Judicial Conduct

Special Committee on Standards of Judicial Conduct
American Bar Association



CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

- A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

CANON 3

A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

- (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should maintain order and decorum in proceedings before him.
- (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary

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

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

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite him to file a brief *amicus curiae*.

- (5) A judge should dispose promptly of the business of the court.

Commentary

Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court

and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

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

Commentary

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

- (7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

- (a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
- (b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;
- (c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

- (i) the means of recording will not distract participants or impair the dignity of the proceedings;
- (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

- (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
- (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

Commentary

Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

B. Administrative Responsibilities

- (1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.
- (2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.
- (3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Commentary

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

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

Commentary

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

C. Disqualification.

- (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
 - (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Commentary

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

- (c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy, or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) is acting as a lawyer in the proceeding;

Commentary

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

- (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
 - (iv) is to the judge's knowledge likely to be a material witness in the proceeding;
- (2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
 - (3) For the purposes of this section:
 - (a) the degree of relationship is calculated according to the civil law system;

Commentary

According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding, but would not disqualify him if a cousin were a party or lawyer in the proceeding.

- (b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
- (c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

- (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
- (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
- (iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification

A judge disqualified by the terms of Canon 3C(1) (c) or Canon 3C(1) (d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Commentary

This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

- A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.
- C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

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

Extra-judicial activities are governed by Canon 5.

CANON 5

A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

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

Commentary

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

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

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

Commentary

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

- (2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.
- (3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary

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

C. Financial Activities.

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.
- *(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

Commentary

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

Canon 5 may cause temporary hardship in jurisdictions where judicial salaries are inadequate and judges are presently supplementing their income through commercial activities. The remedy, however, is to secure adequate judicial salaries.

[Canon 5C(2) sets the minimum standard to which a full-time judge should adhere. Jurisdictions that do not provide adequate judicial salaries but are willing to allow

full-time judges to supplement their incomes through commercial activities may adopt the following substitute until such time as adequate salaries are provided:

*(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business.

Jurisdictions adopting the foregoing substitute may also wish to prohibit a judge from engaging in certain types of businesses such as that of banks, public utilities, insurance companies, and other businesses affected with a public interest.]

- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.
- (4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:
 - (a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation

to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

- (b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;
- (c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6C.

Commentary

This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

- (5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.
- (6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary

Canon 3 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his judicial duties; Canon 6 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to

safeguard the proper performance of his duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

- (7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

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

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

Commentary

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

- (2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

Commentary

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

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

Commentary

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

CANON 6

A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

- A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.
- B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.
- C. Public Reports. A judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the clerk of the court on which he serves or other office designated by rule of court.

CANON 7

A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General.

- (1) A judge or a candidate for election to judicial office should not:
 - (a) act as a leader or hold any office in a political organization;
 - (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

Commentary

A candidate does not publicly endorse another candidate for public office by having his name on the same ticket.

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

B. Campaign Conduct.

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

- (2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than [90] days before a primary election and no later than [90] days after the last election in which he participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

Commentary

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

[Each jurisdiction adopting this Code should prescribe a time limit on soliciting campaign funds that is appropriate to the elective process therein.]

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

Compliance with the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

- A. **Part-time Judge.** A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:
- (1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;
 - (2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.
- B. **Judge Pro Tempore.** A judge pro tempore is a person who is appointed to act temporarily as a judge.
- (1) While acting as such, a judge pro tempore is not required to comply with Canon 5C(2), (3), D, E, F, and G, and Canon 6C.
 - (2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.
- C. **Retired Judge.** A retired judge who receives the same compensation as a full-time judge on the court from which he retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges.

Effective Date of Compliance

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

- (a) continue to act as an officer, director, or non-legal advisor of a family business;
- (b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.

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.

MENOMINEE TRIBAL JUDICIARY

DEPUTY COURT CLERK

General Description of Position

Incumbent's duty is to assist the Court Clerk for the Menominee Tribal Judiciary, in maintaining a record of all proceedings of the court and renders assistance in drafting complaints, subpoenas, warrants, commitments and other documents incidental to the lawful functions of the court. Incumbent performs clerk duties for the Judges as directed by the Chief Justice or Court Clerk.

- Receives telephone calls, answer questions or directing inquiries to the supervisor.
- Helps maintain confidential court files.
- Keeps a complete record of proceedings, including findings, judgments.
- Reads complaints and administers oaths to witnesses when assisting at trial proceedings.
- Performs other duties as assigned.

In the absence of the Court Clerk this person may perform the duties of Court Clerk.

EXAMPLES OF DUTIES

Under the general supervision of the Court and Court Administrator, the Deputy Court Clerk is responsible for the following functions and tasks:

1. Types and files all court orders and jail commitment forms.
2. Maintains all court files which include criminal, civil, domestic, children and traffic citations. (All information collected and filed shall be held in strict confidence).

3. Assist in examining legal documents submitted to court for adherence to law or court procedures, prepares case folders, and posts, files or routes documents.
4. Assist in explaining protocol or procedures or forms to parties involved in cases.
5. Assist in securing information for judges, and contacts witnesses, attorneys, and litigants to obtain information for Court, and instructs parties when to appear in court.
6. Act in the capacity of Clerk of Court in the absence of said person.
7. Assists the Court Clerk from time to time with criminal/civil complaint forms, collection and receipting court fines, child support, etc., and disbursement of bond money.
8. Performs all court docketing with appropriate information regarding arraignments, trials, and hearings including preparation of court calendars.
9. Numbering and indexing all court files.
10. Performs periodic statistical analysis, i.e, number of cases filed, kinds of cases filed, number of cases closed, open, and pending.
11. Performs periodic inventories of all court files to check for incomplete files and missing files.
12. Regulates and maintains a daily log for court files checked out of court records room.
13. Maintains files for all summons, subpoenas, and warrants.
14. Attends arraignments and court hearings in the absence of the Court Clerk.

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 position:

1. Knowledge Required By The Position:

Basic knowledge of clerical duties, such as typing, filing, proper application of grammar and spelling, correct procedures to be used for various court room duties.

2. Supervisory Controls:

Incumbent performs work under the general supervision of the Court Clerk regarding technical advice and general guidance.

3. Guidelines:

Guidelines include policies and procedures required by the Menominee Judiciary. Parts of these guidelines require little interpretation and others may require considerable interpretation.

4. Complexity:

Incumbent will be required to become familiar with court records, procedures, and reports containing highly confidential matters requiring strict security.

5. Scope and Effect:

Timely completion in proper form of all duties will greatly increase the responsiveness, adaptability and services rendered by the Tribal Court.

6. Personal Contact:

Contact are with supervisors, co-workers, Federal, State, local organizations, and the general public.

7. Purpose of Contacts:

Contacts involve court matters pertaining to legal documents, records, and other matters related to the Tribal Court.

8. Physical Demands:

Duties require sitting for long periods at a time, occasionally walking and bending.

9. Work Environment:

Most of the work will be performed in a court room and office setting.

QUALIFICATIONS

1. Education:

High School diploma or equivalent. Some training or schooling in secretarial and general clerical work.

2. Experience:

Must have some experience and knowledge of legal systems, including terminology, legal practices, filing, docketing and handling of legal documents, i.e., court orders, petitions, complaints, etc.

3. Skills:

Must type minimum of 50 wpm, knowledge in interpreting legal documents, court orders, petitions, etc.

4. Other

Membership of the Menominee Tribe and resident of the Reservation.

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

MENOMINEE TRIBAL JUDICIARY

SECRETARY

GENERAL DESCRIPTION OF POSITION

The primary function of the secretary is to provide clerical, secretarial and reception assistance to the tribal court and court clerk.

EXAMPLES OF DUTIES

Under the direct supervision of the court clerk, the secretary is responsible for the following types of functions and tasks:

1. Daily court reporting, typing, filing, bookkeeping and transcribing as required.
2. Receptionist in assisting clients seeking help or assistance in a legal matter.
3. Maintenance of certain files and records in an orderly fashion for the Tribal Court Office.
4. Types correspondence, memoranda, reports and administrative forms.
5. Receives and routes telephone calls and answers routine questions.
6. Operates office equipment not requiring previous training such as adding machines, calculators, photocopy.
7. Performs other work as required or assigned/.

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 position.

1. Supervision Received: Employees are expected to perform secretarial duties with considerable independence, and work is normally checked for accuracy only upon completion. Involvement in administrative processes related to the supervisor's responsibilities is usually monitored closely and accompanied by specific instructions which provide limited discretion in carrying out such assignments.
2. Supervision Exercised: The supervision of subordinates is not a significant factor in this class.
3. Consequence of Error: Errors are primarily related to the exercise of secretarial skills and are detected through a review of work upon completion without serious consequences
4. Judgment/Discretion: Opportunities for the exercise of personal judgment are limited.
5. Public Contact: Public contact is not a significant factor in this class.
6. Procedural Knowledge: A working knowledge of the procedures applicable to the supervisor's assigned area of responsibility is essential.
7. Specialized Skills and Abilities: The full range of secretarial skills.

QUALIFICATIONS

1. Education:
High school diploma or equivalent.
2. Experience:
Should have one year of experience and formal training in typing (50 wpm), bookkeeping, and transcribing.
3. Other:
Eighteen (18) years of age, enrolled member and resident of the Menominee Tribe.

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

MENOMINEE TRIBAL JUDICIARY

PROBATION OFFICER

GENERAL DESCRIPTION OF POSITION

The incumbent is appointed by the Tribal Legislature and is supervised by the Chief Justice. The Probation Officer is a professional, administrative, and advanced participatory probation work position. This person is responsible for developing rehabilitation programs and monitoring progress and supervision of adult and juveniles placed on probation by the Court.

EXAMPLES OF DUTIES

Under the supervision of the Courts, the Probation Officer is responsible for the following functions and tasks:

1. Formulates policies and procedures for the administration of probation services within the framework established by the court.
2. Plans, directs, and evaluates the work of volunteers.
3. Reviews and evaluates the effectiveness and efficiency of programs and services.
4. Maintains cooperative relationships with Federal, state, local and tribal social service agencies, institutions, and law enforcement agencies.
5. Participates in groups, committees, and with individuals interested in probation services or crime prevention.
6. Provides counseling services to adult and juvenile probationers and generally supervises individuals placed on probation.
7. Prepares presentence investigation reports for the court, as well as, status reports to the court for individuals placed on probation.

8. Makes arrests of probationers for violations of probation.
9. Attends conferences and training programs.
10. Performs related work as required or assigned.

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 position:

1. Knowledge Required By The Position:

Extensive knowledge of criminal justice operations in general and a thorough knowledge of the applicable statutes, codes, rules, procedures, and practices of the Court. In addition, this probation officer is expected to have considerable knowledge of the principles and practices of social and correctional casework and counseling (including chemical dependency), interviewing and investigation techniques, and principals of human behavior.

2. Supervisory Controls:

The incumbent administers a probation program with considerable independence. Progress and general supervision is provided by the Chief Justice. In general court administrative matters general supervision is provided by the court clerk.

3. Guidelines:

Guidelines will include the policies and procedures required by the Judiciary. Parts of these guidelines require little interpretation and others may require considerable interpretation. Additional guidelines will be found in Federal, State, and local court decisions.

4. Complexity:

Incumbent will be expected to have skills in interpersonal relationships; ability to analyze and evaluate home situations and family conflicts; ability to speak and write effectively; and ability to analyze and evaluate investigative results.

5. Scope and Effect:

Effective performance of probation duties and functions are essential to the rehabilitation of probationers and the future safety of tribal members.

6. Personal Contacts:

Personal contacts are with Justices, Judges, court staff, probationers, family members, social services representatives, State/local/Tribal police, and the general public.

7. Purpose of Contact:

Personal contacts will be for interviewing probationers, family members and victims, and providing or reviewing social services referrals.

8. Physical Demands:

Duties will require standing in a courtroom and sitting in an office.

9. Work Environment:

Most of the work performed will be indoors, either in an office or courtroom. However, time will be spent on the road and in probationer's homes.

QUALIFICATIONS

1. Education:

High school diploma or equivalent. Training in probation and social services.

2. Experience:

Must have two (2) years experience in counseling, the criminal justice system or court related agency with experience in supervising rehabilitation programs.

3. Other:

The probation officer must be an enrolled member of the Menominee Tribe, a resident of the reservation, never convicted of a felony, possess a valid driver's license (and liability insurance), minimum 18 years of age, and have a listed telephone number.

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

MENOMINEE TRIBAL JUDICIARY

BAILIFF

GENERAL DESCRIPTION OF POSITION

The bailiff is responsible for assisting the judiciary with courtroom activities, security, service of process, and generally aids the judges and court clerk as assigned.

EXAMPLES OF DUTIES

Under the general supervision of the court and clerk of court this person is responsible for the following types of functions or tasks:

1. Prepares courtroom for trial, maintains order in courtroom, opens sessions of court, guards jury from outside contact, supervises sequestered witnesses, and enforces rules of courtroom conduct.
2. Collects and processes files for court hearings, maintains courthouse security, assists judges in the courtroom as needed, and is responsible for court supplies and general maintenance of equipment.
3. Serves summons, subpoenas, and other court documents as directed.
4. Responsible for mail pick-up, delivery and deposit of daily court receipts.
5. Provides explanations, directions, assistance and instructions to the visiting public, jurors, parties, witnesses and attorneys.
6. Additional duties may be assigned by the court.

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 position:

1. Knowledge Required by the Position:

Some knowledge of court procedures; working knowledge of preparing, filing, and maintaining reports and records; and working knowledge of legal terminology.

2. Supervisory Controls:

General supervision is received from a judge or court clerk who provides detailed instructions only when changes in procedures are made and is available to assist in the resolution of unusual problems or to answer difficult questions.

3. Specialized Skills and Abilities:

Ability to plan, schedule, and maintain a court calendar; ability to prepare and maintain clerical reports and records; ability to establish and maintain lines of communication between the court and outside parties; ability to work effectively with judges, attorneys, and the general public.

4. Consequence of Error:

Because of the independence with which employees in this class work, undetected errors could result in extensive remedial work.

5. Judgment/Discretion:

Employees are expected to exercise sound independent judgment in selecting work methods and procedures, and to apply discretion in dealing with problems and acting on requests for information.

6. Public Contact:

Public contact is a fundamental aspect of positions allocated to this class. Assignments routinely require employees to insure that necessary parties are in attendance at the courtroom as scheduled, and require employees to provide information on procedural matters over the telephone and in person.

QUALIFICATIONS

1. Education:

High school diploma or equivalent

2. Experience:

Must have some experience and knowledge of judicial systems and courtroom procedures.

3. Other:

Must be at least 18 years of age, an enrolled Menominee Tribal member, bondable and meet requirements for deputization, have an automobile, valid drivers license and proof of automobile liability insurance.

4. Desirable Skills:

Ability to type and operate/maintain office equipment.

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

MENOMINEE TRIBAL JUDICIARY

TRIBAL PROSECUTOR

GENERAL DESCRIPTION OF POSITION

The Tribal Prosecutor is appointed by a majority of the Tribal Legislature to represent the interests of the Menominee Indian Tribe within the Tribal Judiciary. The Prosecutor shall conduct all prosecutions for the Menominee Tribe before the Menominee tribal courts, shall represent the tribe in all other cases of public interest, perform such other duties as the legislature may determine, as well as all traditional and customary functions of a Prosecutor.

EXAMPLES OF DUTIES

The Tribal Prosecutor shall be responsible for the following general functions and tasks:

1. Works with the Tribal Police in discovery and investigation of offenses against the code and ordinances of the Menominee Tribe and CFR, Title 25; in regard to the certain offenses enumerated by Tribal or Federal laws, ordinances or regulations has duty to prosecute before the Tribal Court alleged offenders.
2. Prepare or assist in preparation of complaints; assist the Tribal Police in obtaining necessary warrants; deals with defense attorneys or defendants in the negotiation of pleas, which he believes fair and reasonable on behalf of the Menominee Tribe.
3. Recommends appropriate sentences for convicted offenders to the court, represents the Menominee Tribe in the event of an appeal.
4. Appears and assist in juvenile court proceedings.

5. Shall assist in training the Tribal Police in such matters as the manner of making searches and arrests, the proper handling and processing of prisoners, the keeping of records of offenses and police activities, the duties of the police pursuant to court orders and legal requirements, the art of the presentation of evidence and testimony, methods of preventing crime and of securing cooperation with the Menominee community in establishing better social relations, and other subjects of importance for efficient police duty.
6. Shall serve as legal advisor to the Judiciary regarding questions of law and procedures presented to the court. In performing such a function, the Prosecutor shall review with the judges all papers and briefs filed with the court and arguments presented to the court, and upon request of the court shall research and investigate issues and report to the court as to his findings.
7. Supervises the work of any Assistant Tribal Prosecutor.
8. Shall represent the tribe in cases of public interest including Indian Child Welfare matters, probation violations, social services and the 51.42 Board (i.e., juveniles, various mental and alcoholic commitments and guardianships), and serve as Amicus Curiae in other cases of public interest.

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 position:

1. Knowledge Required By This Position:

Knowledge of criminal trial procedures and practices, Code of Federal Regulations and tribal codes, and presentation of criminal and juvenile cases.

2. Supervisory Controls:

The prosecutor exercises independent judgment whether and how to prosecute a complaint.

3. Guidelines:

Guidelines will be the Menominee Constitution, Tribal Code or ordinances, policies, ABA Code of Professional Responsibility, 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.

4. Complexity:

Work involves independent judgment regarding prosecution of court cases, some of which are difficult and sensitive. Incumbent exercises considerable discretion and/or relies on own knowledge of the law to determine which complaints should be prosecuted as required in accordance with existing laws.

5. Scope and Effect:

Effective investigation and prosecution of cases on the Menominee Reservation will allow the court to exercise independent judicial judgment in deciding cases, and provide tribal members a separate screening process between police and judicial operations.

6. Personal Contact:

Personal contacts are with court judges and staff, Federal, State and Tribal Police, victims, witnesses, defendants, social referral agencies, jurors, families of juveniles, and the general public.

7. Purpose of the Contacts

The purpose of these contacts will be to investigate complaints, interview parties, and prosecute cases.

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 Environment:

Work is performed indoors in a courtroom and office setting.

QUALIFICATIONS

1. Education:

High school diploma or equivalent. Training or schooling in court or police work with an emphasis on criminal law. Preferably the incumbent should be an attorney-at-law, licensed to practice law in Wisconsin or eligible to be licensed.

2. Experience:

Must have some experience in legal systems (preferably with the Menominee Tribal Judiciary) including an ability to appraise, interpret and apply legal principals and precedents to difficult legal problems. In addition, the incumbent should be able to present statements of fact, law and arguments clearly and logically in writing or orally in court.

3. Other:

Enrolled member of the Menominee Tribe, at least 18 years of age, and a resident of the reservation for at least one (1) year. The incumbent should never have been convicted of a felony (or of a misdemeanor within the last year).

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

CHAPTER 6: Lay Advocates

LAY ADVOCATES

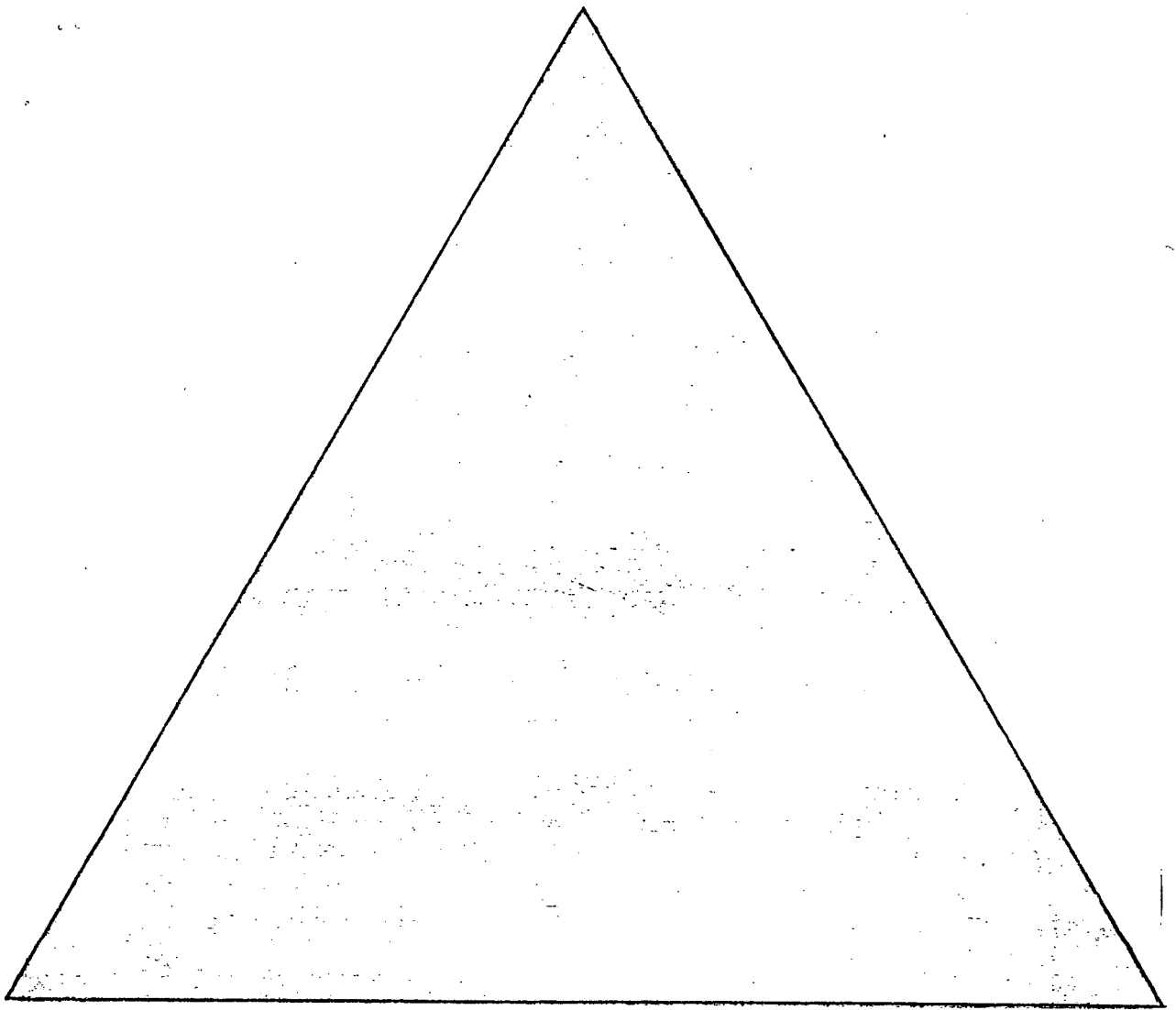
ABA CODE OF PROFESSIONAL RESPONSIBILITY AND JUDICIAL CONDUCT.

The Menominee Constitution and Bylaws, (Article V, § 6), states that the Supreme Court shall by order establish rules of procedure and ethics for all tribal courts. The Tribal Judiciary and Interim Law and Order Code §§ 1-2-7 (3) and § 1-4-3 require judges, and both professional attorneys and lay advocates to conform their conduct to the American Bar Association's code of Judicial Conduct and Professional Responsibility. The National Center could find no copies of the ABA codes at the court. The court is required by Tribal Interim Law and Order Code § 1-9-1 to keep a copy of the ABA code available for public inspection at the clerk's office.

It appears that there may be some practices at the court which conflict with the ABA code (See attached copies of ABA Codes). For instance, National Center staff were informed of occasions when the same person initiated a case as prosecutor and ultimately ended up as defense counsel on the same case. The ABA Code of Professional Responsibility, DR 9-101 (B) states that "A lawyer shall not accept private employment in a matter in which he has substantial responsibility while he was a public employee."

RECOMMENDATION

The court should acquire copies of the ABA code of Judicial Conduct for each judge and a copy for the central court library. The court should also acquire copies of the Code of Professional Responsibility for the central library and the clerk's office as required by tribal code § 1-9-1.



AMERICAN BAR ASSOCIATION

CODE OF PROFESSIONAL RESPONSIBILITY

CANON 1

A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession

ETHICAL CONSIDERATIONS

EC 1-1 A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

EC 1-2 The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education¹ or moral standards² or of other relevant factors³ but who nevertheless seek to practice law. To assure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar.⁴ In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of pre-admission and post-admission legal education.

EC 1-3 Before recommending an applicant for admission, a lawyer should satisfy himself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, he should report to proper officials all unfavorable information he possesses relating to the character or other qualifications of an applicant.⁵

EC 1-4 The integrity of the profession can be maintained only if conduct of lawyers in violation of the

Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules.⁶ A lawyer should, upon request serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules.⁷

EC 1-5 A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct.⁸ Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

EC 1-6 An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice.⁹ In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice.

DISCIPLINARY RULES

DR 1-101 Maintaining Integrity and Competence of the Legal Profession.

- (A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.¹⁰
- (B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.¹¹

DR 1-102 Misconduct.

- (A) A lawyer shall not:
- (1) Violate a Disciplinary Rule.
 - (2) Circumvent a Disciplinary Rule through actions of another.¹²
 - (3) Engage in illegal conduct involving moral turpitude.¹³

- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

- (5) Engage in conduct that is prejudicial to the administration of justice.

- (6) Engage in any other conduct that adversely reflects on his fitness to practice law.¹⁴

DR 1-103 Disclosure of Information to Authorities.

- (A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.¹⁵
- (B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.¹⁶

CANON 2

A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available

ETHICAL CONSIDERATIONS

EC 2-1 The need of members of the public for legal services¹ is met only if they recognize their legal problems, appreciate the importance of seeking assistance,² and are able to obtain the services of acceptable legal counsel.³ Hence, important functions of the legal profession are to educate laymen to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.⁴

Recognition of Legal Problems

EC 2-2 The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed.⁵ Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Such educational programs should be motivated by a desire to benefit the public rather than to obtain publicity or employment for particular lawyers.⁶ Examples of permissible activities include preparation of institutional advertisements⁷ and professional articles for lay publications⁸ and participation in seminars, lectures, and civic programs. But a lawyer who participates in such activities should shun personal publicity.⁹

EC 2-3 Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances.¹⁰ The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laymen in recognizing legal problems.¹¹ The advice is proper only if motivated by a desire to protect one who does not recognize that he may have legal problems or who is ignorant of his legal rights or obligations. Hence, the advice is improper if motivated by a desire to obtain personal benefit,¹² secure personal publicity, or cause litigation to be brought merely to harass or injure another. Obviously, a lawyer should not contact a non-client, directly or indirectly, for the purpose of being retained to represent him for compensation.

EC 2-4 Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers advice likely to produce legal controversy may well be suspect if he receives professional employment or other benefits as a result.¹³ A lawyer who volunteers advice that one should obtain the services of a lawyer generally should not himself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.¹⁴

EC 2-5 A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems,¹⁵ since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laymen should caution them not to attempt to solve individual problems upon the basis of the information contained therein.¹⁶

Selection of a Lawyer: Generally

EC 2-6 Formerly a potential client usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom he had confidence. This traditional selection process worked well because it was initiated by the client and the choice was an informed one.

EC 2-7 Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen to make intelligent choices.¹⁷ The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers.¹⁸

EC 2-8 Selection of a lawyer by a layman often is the result of the advice and recommendation of third parties—relatives, friends, acquaintances, business associates, or other lawyers. A layman is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his employment.¹⁹ A lawyer should not compensate another person for recommending him, for influencing a prospective client to employ him, or to encourage future recommendations.²⁰

Selection of a Lawyer: Professional Notices and Listings

EC 2-9 The traditional ban against advertising by lawyers, which is subject to certain limited exceptions, is rooted in the public interest. Competitive advertising would encourage extravagant, artful, self-laudatory²¹ brashness in seeking business and thus could mislead the layman.²² Furthermore, it would inevitably produce unrealistic expectations in particular cases and bring about distrust of the law and lawyers.²³ Thus, public confidence in our legal system would be impaired by such advertisements of professional services. The attorney-client relationship is personal and unique and should not be established as the result of pressures and deceptions.²⁴ History has demonstrated that public confidence in the legal system is best preserved by strict, self-imposed controls over, rather than by unlimited, advertising.

EC 2-10 Methods of advertising that are subject to the objections stated above²⁵ should be and are prohibited.²⁶ However, the Disciplinary Rules recognize the value of giving assistance in the selection process through forms of advertising that furnish identification of a lawyer while avoiding such objections. For example, a lawyer may be identified in the classified section of the telephone directory,²⁷ in the office building directory, and on his letterhead and professional card.²⁸ But at all times the permitted notices should be dignified and accurate.

EC 2-11 The name under which a lawyer conducts his practice may be a factor in the selection process.²⁹ The use of a trade name or an assumed name could mislead laymen concerning the identity, responsibility, and status of those practicing thereunder.³⁰ Accordingly, a lawyer in private practice should practice only under his own name, the name of a lawyer employing him, a partnership name composed of the name of one or more of the lawyers practicing in a partnership, or, if permitted by law, in the name of a professional legal corporation, which should be clearly designated as such. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby.³¹ However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2-12 A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his name to remain in the name of the firm if he actively continues to practice law as a member thereof. Otherwise, his name should be removed from the firm name,³² and he should not be identified as a past or present member of the firm; and he should not hold himself out as being a practicing lawyer.

EC 2-13 In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status.³³ He should not hold himself out as being a partner or associate of a law firm if he is not one in fact,³⁴ and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer.³⁵

EC 2-14 In some instances a lawyer confines his practice to a particular field of law.³⁶ In the absence of state controls to insure the existence of special competence, a lawyer should not be permitted to hold himself out as a specialist³⁷ or as having special training or ability, other than in the historically excepted fields of admiralty, trademark, and patent law.³⁸

EC 2-15 The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layman to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

EC 2-16 The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees³⁹ should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services,⁴⁰ and lawyers should support and participate in ethical activities designed to achieve that objective.⁴¹

*Financial Ability to Employ Counsel:
Persons Able to Pay Reasonable Fees*

EC 2-17 The determination of a proper fee requires consideration of the interests of both client and lawyer.⁴³ A lawyer should not charge more than a reasonable fee,⁴⁴ for excessive cost of legal service would deter laymen from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his client effectively and to preserve the integrity and independence of the profession.⁴⁵

EC 2-18 The determination of the reasonableness of a fee requires consideration of all relevant circumstances,⁴⁶ including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required, his experience, ability, and reputation, the nature of the employment, the responsibility involved, and the results obtained. Suggested fee schedules and economic reports of state and local bar associations provide some guidance on the subject of reasonable fees.⁴⁷ It is a commendable and long-standing tradition of the bar that special consideration is given in the fixing of any fee for services rendered a brother lawyer or a member of his immediate family.

EC 2-19 As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes.

EC 2-20 Contingent fee arrangements⁴⁸ in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his claim, and (2) a successful prosecution of the claim produces a *res* out of which the fee can be paid.⁴⁹ Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the same consideration as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a *res* with which to pay the fee.

EC 2-21 A lawyer should not accept compensation or any thing of value incident to his employment or services from one other than his client without the knowledge and consent of his client after full disclosure.⁵⁰

EC 2-22 Without the consent of his client, a lawyer should not associate in a particular matter another lawyer outside his firm. A fee may properly be divided between lawyers⁵¹ properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer⁵² and if the total fee is reasonable.

EC 2-23 A lawyer should be zealous in his efforts to avoid controversies over fees with clients⁵³ and should attempt to resolve amicably any differences on the subject.⁵⁴ He should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.⁵⁴

*Financial Ability to Employ Counsel:
Persons Unable to Pay Reasonable Fees*

EC 2-24 A layman whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.⁵⁵

EC 2-25 Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need.⁵⁶ Thus it has been necessary for the profession to institute additional programs to provide legal services.⁵⁷ Accordingly, legal aid offices,⁵⁸ lawyer referral services,⁵⁹ and other related programs have been developed, and others will be developed, by the profession.⁶⁰ Every lawyer should support all proper efforts to meet this need for legal services.⁶¹

Acceptance and Retention of Employment

EC 2-26 A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become his client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his share of tendered employment which may be unattractive both to him and the bar generally.⁶²

EC 2-27 History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.⁶³

EC 2-28 The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers,⁶⁴ public officials, or influential members of the community does not justify his rejection of tendered employment.

EC 2-29 When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons.⁶⁵ Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity⁶⁶ or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty,⁶⁷ or the belief of the lawyer regarding the merits of the civil case.⁶⁸

EC 2-30 Employment should not be accepted by a lawyer when he is unable to render competent service⁶⁹ or when he knows or it is obvious that the person seeking to employ him desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another.⁷⁰ Likewise, a lawyer should decline employment if the intensity of his personal feeling, as distinguished from a community attitude, may impair his effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, he should not accept employment in the matter unless the other counsel approves⁷¹ or withdraws, or the client terminates the prior employment.⁷²

EC 2-31 Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent his client by advising whether to take an appeal and, if the appeal is prosecuted, by representing him through the appeal unless new counsel is substituted or withdrawal is permitted by the appropriate court.

EC 2-32 A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances⁷³, and in a matter pending before a tribunal he must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client and the possibility of prejudice to his client⁷⁴ as a result of his withdrawal. Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal,⁷⁵ suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, he should refund to the client any compensation not earned during the employment.⁷⁶

DISCIPLINARY RULES

DR 2-101 Publicity in General.⁷⁷

- (A) A lawyer shall not prepare, cause to be prepared, use, or participate in the use of, any form of public communication that contains professionally self-laudatory statements calculated to attract lay clients; as used herein, "public communication" includes, but is not limited to, communication by means of television, radio, motion picture, newspaper, magazine, or book.
- (B) A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or telephone directories, or other means of commercial publicity,⁷⁸ nor shall he authorize or permit others to do so in his behalf⁷⁹ except as permitted under DR 2-103. This does not prohibit limited and dignified identification of a lawyer as a lawyer as well as by name⁸⁰:
 - (1) In political advertisements when his professional status is germane to the political campaign or to a political issue.
 - (2) In public notices when the name and profession of a lawyer are required or authorized by law or are reasonably pertinent for a purpose other than the attraction of potential clients.⁸¹
 - (3) In routine reports and announcements of a bona fide business, civic, professional, or political organization in which he serves as a director or officer.
 - (4) In and on legal documents prepared by him.
 - (5) In and on legal textbooks, treatises, and other legal publications, and in dignified advertisements thereof.
- (C) A lawyer shall not compensate or give any thing of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.⁸²

DR 2-102 Professional Notices, Letterheads, Offices, and Law Lists.

- (A) A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices,⁸³ except that the following may be used if they are in dignified form:
 - (1) A professional card of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, and any information permitted under DR 2-105. A professional card of a law firm may also give the names of members and associates. Such cards may be used for identification⁸⁴ but may not be published in periodicals, magazines, newspapers,⁸⁵ or other media.⁸⁶
 - (2) A brief professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm, which may be mailed to lawyers, clients, former clients, personal friends, and relatives.⁸⁷ It shall not state biographical data except to the extent reasonably necessary to identify the lawyer or to explain the change in his association, but it may state the immediate past position of the lawyer.⁸⁸ It may give the names and dates of predecessor firms in a continuing line of succession. It shall not state the nature of the practice except as permitted under DR 2-105.⁸⁹
 - (3) A sign on or near the door of the office and in the building directory identifying the law office. The sign shall not state the nature of the practice, except as permitted under DR 2-105.
 - (4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates,⁹⁰ and names and dates relating to deceased and retired members.⁹¹ A lawyer may be designated "Of Counsel" on a letterhead if he has a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if he or the firm devotes a substantial amount of professional time in the representation of that client.⁹² The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

- (5) A listing of the office of a lawyer or law firm in the alphabetical and classified sections of the telephone directory or directories for the geographical area or areas in which the lawyer resides or maintains offices or in which a significant part of his clientele resides⁹³ and in the city directory of the city in which his or the firm's office is located;⁹⁴ but the listing may give only the name of the lawyer or law firm, the fact he is a lawyer, addresses, and telephone numbers.⁹⁵ The listing shall not be in distinctive form;⁹⁶ or type.⁹⁷ A law firm may have a listing in the firm name separate from that of its members and associates.⁹⁸ The listing in the classified section shall not be under a heading or classification other than "Attorneys" or "Lawyers,"⁹⁹ except that additional headings or classifications descriptive of the types of practice referred to in DR 2-105 are permitted.¹⁰⁰
- (6) A listing in a reputable law list¹⁰¹ or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession.¹⁰² A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards. The published data may include only the following: name, including name of law firm and names of professional associates; addresses¹⁰³ and telephone numbers; one or more fields of law in which the lawyer or law firm concentrates;¹⁰⁴ a statement that practice is limited to one or more fields of law; a statement that the lawyer or law firm specializes in a particular field of law or law practice but only if authorized under DR 2-105 (A)(4);¹⁰⁵ date and place of birth; date and place of admission to the bar of state and federal courts; schools attended, with dates of graduation, degrees, and other scholastic distinctions; public or quasi-public offices; military service; posts of honor; legal authorships; legal teaching positions; memberships, offices, committee assignments, and section memberships in bar associations; memberships and offices in legal fraternities and legal societies; technical and professional licenses; memberships in scientific, technical and professional associations and societies; foreign language ability; names and addresses of references,¹⁰⁶ and, with their consent, names of clients regularly represented.¹⁰⁷
- (B) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or professional association may contain "P.C." or "P.A." or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.¹⁰⁸ A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm.¹⁰⁹ and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.¹¹⁰
- (C) A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners.¹¹¹
- (D) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed

jurisdictions;¹²² however, the same firm name may be used in each jurisdiction.

(E) A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his other profession or business.

(F) Nothing contained herein shall prohibit a lawyer from using or permitting the use of, in connection with his name, an earned degree or title derived therefrom indicating his training in the law.

DR 2-103 Recommendation of Professional Employment.¹²³

(A) A lawyer shall not recommend employment, as a private practitioner,¹²⁴ of himself, his partner, or associate to a non-lawyer who has not sought his advice regarding employment of a lawyer.¹²⁵

(B) Except as permitted under DR 2-103 (C), a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment¹²⁶ by a client, or as a reward for having made a recommendation resulting in his employment¹²⁷ by a client.

(C) A lawyer shall not request a person or organization to recommend employment, as a private practitioner, of himself, his partner, or associate,¹²⁸ except that he may request referrals from a lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident thereto.¹²⁹

(D) A lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services or those of his partners or associates. However, he may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgment is exercised in behalf of his client without interference or control by any organization or other person:

(1) A legal aid office or public defender office:

(a) Operated or sponsored by a duly accredited law school.

(b) Operated or sponsored by a bona fide non-profit community organization.

(c) Operated or sponsored by a governmental agency.

(d) Operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.¹³⁰

(2) A military legal assistance office.

(3) A lawyer referral service operated, sponsored, or approved by a bar association representative of the general bar of the geographical area in which the association exists.¹³¹

(4) A bar association representative of the general bar of the geographical area in which the association exists.¹³²

(5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities,¹³³ and only if the following conditions, unless prohibited by such interpretation, are met:

(a) The primary purposes of such organization do not include the rendition of legal services.

(b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.

(c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.

(d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter.

(E) A lawyer shall not accept employment when he knows or it is obvious that the person who seeks

his services does so as a result of conduct prohibited under this Disciplinary Rule.

DR 2-104 Suggestion of Need of Legal Services.¹³⁴

(A) A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from that advice,¹³⁵ except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client.¹³⁶

(2) A lawyer may accept employment that results from his participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D)(1) through (5), to the extent and under the conditions prescribed therein.

(3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2-103(D)(1), (2), or (5) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein.

(4) Without affecting his right to accept employment, a lawyer may speak publicly or write for publication on legal topics¹³⁷ so long as he does not emphasize his own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but shall not seek, employment from those contacted for the purpose of obtaining their joinder.¹³⁸

DR 2-105 Limitation of Practice.¹³⁹

(A) A lawyer shall not hold himself out publicly as a specialist¹⁴⁰ or as limiting his practice,¹⁴¹ except as permitted under DR 2-102 (A) (6) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms, on his letterhead and office sign. A lawyer engaged in the trademark practice may use the designation "Trademarks," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms, on his letterhead and office sign, and a lawyer engaged in the admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or "Admiralty Lawyer," or any combination of those terms, on his letterhead and office sign.¹⁴²

(2) A lawyer may permit his name to be listed in lawyer referral service offices according to the fields of law in which he will accept referrals.

(3) A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability,¹⁴³ but the announcement shall not contain a representation of special competence or experience.¹⁴⁴ The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals.

(4) A lawyer who is certified as a specialist in a particular field of law or law practice by the authority having jurisdiction under state law over the subject of specialization by lawyers may hold himself out as such specialist but only in accordance with the rules prescribed by that authority.¹⁴⁵

DR 2-106 Fees for Legal Services.¹⁴⁶

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.¹⁴⁷

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be

considered as guides in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
 - (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
 - (3) The fee customarily charged in the locality for similar legal services.
 - (4) The amount involved and the results obtained.
 - (5) The time limitations imposed by the client or by the circumstances.
 - (6) The nature and length of the professional relationship with the client.
 - (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
 - (8) Whether the fee is fixed or contingent.¹³⁸
- (C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.¹³⁹

DR 2-107 Division of Fees Among Lawyers.

- (A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:
- (1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.
 - (2) The division is made in proportion to the services performed and responsibility assumed by each.¹⁴⁰
 - (3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.¹⁴¹
- (B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2-108 Agreements Restricting the Practice of a Lawyer.

- (A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.¹⁴²
- (B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law.

DR 2-109 Acceptance of Employment.

- (A) A lawyer shall not accept employment on behalf of a person if he knows or it is obvious that such person wishes to:
- (1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person.¹⁴³
 - (2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2-110 Withdrawal from Employment.¹⁴⁴

(A) In general.

- (1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.
 - (2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.
 - (3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.
- (B) **Mandatory withdrawal.**

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer repre-

senting a client in other matters shall withdraw from employment, if:

- (1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.
 - (2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.¹⁴⁵
 - (3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.
 - (4) He is discharged by his client.
- (C) **Permissive withdrawal.¹⁴⁶**

If DR 2-110 (B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

- (1) His client:
 - (a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.¹⁴⁷
 - (b) Personally seeks to pursue an illegal course of conduct.
 - (c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.
 - (d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.
 - (e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.
 - (f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.
- (2) His continued employment is likely to result in a violation of a Disciplinary Rule.
 - (3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.
 - (4) His mental or physical condition renders it difficult for him to carry out the employment effectively.
 - (5) His client knowingly and freely assents to termination of his employment.
 - (6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

CANON 3

A Lawyer Should Assist in Preventing the Unauthorized Practice of Law

ETHICAL CONSIDERATIONS

EC 3-1 The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

EC 3-2 The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved. Competent professional judgment is the product of a trained familiarity with law and legal processes, a disciplined, analytical approach to legal problems, and a firm ethical commitment.

EC 3-3 A non-lawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a regulated profession committed to such standards.¹ The Disciplinary Rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the attorney-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his client.

EC 3-4 A layman who seeks legal services often is not in a position to judge whether he will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he is subject to the regulations of the legal profession.

EC 3-5 It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law.² Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment

is not involved, non-lawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

EC 3-6 A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product.³ This delegation enables a lawyer to render legal service more economically and efficiently.

EC 3-7 The prohibition against a non-lawyer practicing law does not prevent a layman from representing himself, for then he is ordinarily exposing only himself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but anyone who does not wish to avail himself of such representation is not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences.

EC 3-8 Since a lawyer should not aid or encourage a layman to practice law, he should not practice law in association with a layman or otherwise share legal fees with a layman.⁴ This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in his firm or practice may not be paid to his estate or specified persons such as his widow or heirs.⁵ In like manner, profit-sharing retirement plans of a lawyer or law firm which include non-lawyer office employees are not improper.⁶ These limited exceptions to the rule against sharing legal fees with laymen are permissible since they do not aid or encourage laymen to practice law.

EC 3-9 Regulation of the practice of law is accomplished principally by the respective states.⁷ Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states.⁸ In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.⁹

DISCIPLINARY RULES

DR 3-101 Aiding Unauthorized Practice of Law.¹⁰

(A) A lawyer shall not aid a non-lawyer in the unauthorized practice of law.¹¹

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.¹²

DR 3-102 Dividing Legal Fees with a Non-Lawyer.

(A) A lawyer or law firm shall not share legal fees with a non-lawyer,¹³ except that:

(1) An agreement by a lawyer with his firm, partner, or associate may provide for the payment of money, over a reasonable period of time after his death, to his estate or to one or more specified persons.¹⁴

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include non-lawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.¹⁵

DR 3-103 Forming a Partnership with a Non-Lawyer.

(A) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.¹⁶

CANON 4

A Lawyer Should Preserve the Confidences and Secrets of a Client

ETHICAL CONSIDERATIONS

EC 4-1 Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him.¹ A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client.² A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

EC 4-2 The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when his client consents after full disclosure,³ when necessary to perform his professional employment, when permitted by a Disciplinary Rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of his client to partners or associates of his firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to non-lawyer employees of the office, particularly secretaries and those having access to the files; and this obligates a lawyer to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of his client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in his professional relationship.⁴ Thus, in the absence of consent of his client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should he, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or his confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning his clients.

EC 4-3 Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided he exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

EC 4-4 The attorney-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, he should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client.

EC 4-5 A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of his client after full disclosure, such information for his own purposes.⁵ Likewise, a lawyer should be diligent in his efforts to prevent the misuse of such information by his employees and associates.⁶ Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another,⁷ and no employment should be accepted that might require such disclosure.

EC 4-6 The obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment.⁸ Thus a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets.⁹ A lawyer should also provide for the protection of the confidences and secrets of his client following the termination of the practice of the lawyer, whether termination is due to death, disability, or retirement. For example, a lawyer might provide for the personal papers of the client to be returned to him and for the papers of the lawyer to be delivered to another lawyer or to be destroyed. In determining the method of disposition, the instructions and wishes of the client should be a dominant consideration.

DISCIPLINARY RULES

DR 4-101 Preservation of Confidences and Secrets of a Client.¹⁰

- (A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.
- (B) Except when permitted under DR 4-101 (C), a lawyer shall not knowingly:
- (1) Reveal a confidence or secret of his client.¹¹
 - (2) Use a confidence or secret of his client to the disadvantage of the client.
 - (3) Use a confidence or secret of his client for the advantage of himself¹² or of a third person,¹³ unless the client consents after full disclosure.
- (C) A lawyer may reveal:
- (1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.¹⁴
 - (2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.¹⁵
 - (3) The intention of his client to commit a crime¹⁶ and the information necessary to prevent the crime.¹⁷
 - (4) Confidences or secrets necessary to establish or collect his fee¹⁸ or to defend himself or his employees or associates against an accusation of wrongful conduct.¹⁹
- (D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101 (C) through an employee.

a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

EC 5-4 If, in the course of his representation of a client, a lawyer is permitted to receive from his client a beneficial ownership in publication rights relating to the subject matter of the employment, he may be tempted to subordinate the interests of his client to his own anticipated pecuniary gain. For example, a lawyer in a criminal case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his employment has previously ended.

EC 5-5 A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or over-reached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances.⁴ Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.⁴

EC 5-6 A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.⁵

EC 5-7 The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of his client or otherwise to become financially interested in the outcome of the litigation.⁶ However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of litigation. Although a contingent fee arrangement⁷ gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layman can obtain the services of a lawyer of his choice. But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the arrangement will be beneficial to the client.

EC 5-8 A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client.⁸ Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action,⁹ but the ultimate liability for such costs and expenses must be that of the client.

EC 5-9 Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

EC 5-10 Problems incident to the lawyer-witness rela-

tionship arise at different stages; they relate either to whether a lawyer should accept employment or should withdraw from employment.¹⁰ Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative or if his testimony will relate only to an uncontested issue.¹¹ In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness.¹² In making such decision, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment.¹³ Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate.¹⁴

EC 5-11 A lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed.¹⁵ In like manner, his personal interests should not deter him from suggesting that additional counsel be employed; on the contrary, he should be alert to the desirability of recommending additional counsel when, in his judgment, the proper representation of his client requires it. However, a lawyer should advise his client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and he should disclose the reasons for his belief.

EC 5-12 Inability of co-counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken.¹⁶

EC 5-13 A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how he should fulfill his professional obligations to a person or organization that employs him as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, he should be vigilant to safeguard his fidelity as a lawyer to his employer, free from outside influences.

Interests of Multiple Clients

EC 5-14 Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client.¹⁷ This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.¹⁸

EC 5-15 If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests;¹⁹ and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing,

CANON 5

A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client

ETHICAL CONSIDERATIONS

EC 5-1 The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties.¹ Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

Interests of a Lawyer That May Affect His Judgment

EC 5-2 A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client.² After accepting employment, a lawyer carefully should refrain from acquiring a property

right or assuming a position that would tend to make his judgment less protective of the interests of his client.

EC 5-3 The self-interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not presently interfere with the exercise of his independent judgment, but the likelihood of interference can reasonably be foreseen by him,

a lawyer should explain the situation to his client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

EC 5-4 If, in the course of his representation of a client, a lawyer is permitted to receive from his client a beneficial ownership in publication rights relating to the subject matter of the employment, he may be tempted to subordinate the interests of his client to his own anticipated pecuniary gain. For example, a lawyer in a criminal case who obtains from his client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of his publication rights to the prejudice of his client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his employment has previously ended.

EC 5-5 A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or over-reached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances.³ Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client.⁴

EC 5-6 A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.⁵

EC 5-7 The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of his client or otherwise to become financially interested in the outcome of the litigation.⁶ However, it is not improper for a lawyer to protect his right to collect a fee for his services by the assertion of legally permissible liens, even though by doing so he may acquire an interest in the outcome of litigation. Although a contingent fee arrangement⁷ gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layman can obtain the services of a lawyer of his choice. But a lawyer, because he is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the arrangement will be beneficial to the client.

EC 5-8 A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client.⁸ Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action,⁹ but the ultimate liability for such costs and expenses must be that of the client.

EC 5-9 Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

EC 5-10 Problems incident to the lawyer-witness relationship arise at different stages; they relate either to whether a lawyer should accept employment or should withdraw from employment.¹⁰ Regardless of when the problem arises, his decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that he will be called as a witness because his testimony would be merely cumulative or if his testimony will relate only to an uncontested issue.¹¹ In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue, he may serve as advocate even though he may be a witness.¹² In making such decision, he should determine the personal or financial sacrifice of the client that may result from his refusal of employment or withdrawal therefrom, the materiality of his testimony, and the effectiveness of his representation in view of his personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment.¹³ Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate.¹⁴

EC 5-11 A lawyer should not permit his personal interests to influence his advice relative to a suggestion by his client that additional counsel be employed.¹⁴ In like manner, his personal interests should not deter him from suggesting that additional counsel be employed; on the contrary, he should be alert to the desirability of recommending additional counsel when, in his judgment, the proper representation of his client requires it. However, a lawyer should advise his client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and he should disclose the reasons for his belief.

EC 5-12 Inability of co-counsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his resolution, and the decision of the client shall control the action to be taken.¹⁵

EC 5-13 A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how he should fulfill his professional obligations to a person or organization that employs him as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, he should be vigilant to safeguard his fidelity as a lawyer to his employer, free from outside influences.

Interests of Multiple Clients

EC 5-14 Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client.¹⁷ This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.¹⁸

EC 5-15 If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment. He should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests;¹⁹ and there are few situations in which he would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he would have to withdraw from employment with likelihood of resulting hardship on the clients; and for this reason it is preferable that he refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that he can retain his independent judgment on behalf of each client; and if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his clients.

EC 5-16 In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his need for representation free of any potential conflict and to obtain other counsel if he so desires.²⁰ Thus before a lawyer may represent multiple clients, he should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent.²¹ If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he should also advise all of the clients of those circumstances.²²

EC 5-17 Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer,²³ and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon his judgment is not unlikely.

EC 5-18 A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

EC 5-19 A lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, he should explain any circumstances that might cause a client to question his undivided loyalty.²⁴ Regardless of the belief of a lawyer that he may properly represent multiple clients, he must defer to a client who holds the contrary belief and withdraw from representation of that client.

EC 5-20 A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he should not thereafter represent in the dispute any of the parties involved.

Desires of Third Persons

EC 5-21 The obligation of a lawyer to exercise professional judgment solely on behalf of his client requires that he disregard the desires of others that might impair his free judgment.²⁵ The desires of a third person will seldom adversely affect a lawyer unless that person is in

a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his client;²⁶ and if he or his client believes that the effectiveness of his representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of his client.

EC 5-22 Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he is compensated directly by his client and his professional work is exclusively with his client. On the other hand, if a lawyer is compensated from a source other than his client, he may feel a sense of responsibility to someone other than his client.

EC 5-23 A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client. On some occasions, decisions on priority of work may be made by the employer rather than the lawyer with the result that prosecution of work already undertaken for clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further its own economic interests through the actions of the lawyers employed by it. Since a lawyer must always be free to exercise his professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his professional freedom.²⁷

DISCIPLINARY RULES

DR 5-101 Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

- (A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.²⁹
- (B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:
 - (1) If the testimony will relate solely to an uncontested matter.
 - (2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.
 - (3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.
 - (4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

DR 5-102 Withdrawal as Counsel When the Lawyer Becomes a Witness.³⁰

- (A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B) (1) through (4).
- (B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.³¹

DR 5-103 Avoiding Acquisition of Interest in Litigation.

- (A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client,³² except that he may:
 - (1) Acquire a lien granted by law to secure his fee or expenses.
 - (2) Contract with a client for a reasonable contingent fee in a civil case.³³
- (B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client,³⁴ except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5-104 Limiting Business Relations with a Client.

- (A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.
- (B) Prior to conclusion of all aspects of the matter giving rise to his employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which he acquires an interest in publication rights with respect to the subject matter of his employment or proposed employment.

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

- (A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment

in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment,³⁵ except to the extent permitted under DR 5-105(C).³⁶

- (B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).³⁷
- (C) In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.
- (D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

DR 5-106 Settling Similar Claims of Clients.³⁸

- (A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

DR 5-107 Avoiding Influence by Others Than the Client.

- (A) Except with the consent of his client after full disclosure, a lawyer shall not:
 - (1) Accept compensation for his legal services from one other than his client.
 - (2) Accept from one other than his client any thing of value related to his representation of or his employment by his client.³⁹
- (B) A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services.⁴⁰
- (C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
 - (1) A non-lawyer owns any interest therein,⁴¹ except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) A non-lawyer is a corporate director or officer thereof;⁴² or
 - (3) A non-lawyer has the right to direct or control the professional judgment of a lawyer.⁴³

CANON 6

A Lawyer Should Represent a Client Competently

ETHICAL CONSIDERATIONS

EC 6-1 Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice¹ and should accept employment only in matters which he is or intends to become competent to handle.

EC 6-2 A lawyer is aided in attaining and maintaining his competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs,² concentrating in particular areas of the law, and by utilizing other available means. He has the additional ethical obligation to assist in improving the legal profession, and he may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of his younger associates and the giving of sound guidance to all lawyers who consult him. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to meet those standards himself.

EC 6-3 While the licensing of a lawyer is evidence that he has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified.³ However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which he is not and does not expect to become so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.⁴

EC 6-4 Having undertaken representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.

EC 6-5 A lawyer should have pride in his professional endeavors. His obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

EC 6-6 A lawyer should not seek, by contract or other means, to limit his individual liability to his client for his malpractice. A lawyer who handles the affairs of his client properly has no need to attempt to limit his liability for his professional activities and one who does not handle the affairs of his client properly should not be permitted to do so. A lawyer who is a stockholder

in or is associated with a professional legal corporation may, however, limit his liability for malpractice of his associates in the corporation, but only to the extent permitted by law.⁵

DISCIPLINARY RULES

DR 6-101 Failing to Act Competently.

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.⁶

DR 6-102 Limiting Liability to Client.

(A) A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

CANON 7

A Lawyer Should Represent a Client Zealously Within the Bounds of the Law

ETHICAL CONSIDERATIONS

EC 7-1 The duty of a lawyer, both to his client¹ and to the legal system, is to represent his client zealously² within the bounds of the law,³ which includes Disciplinary Rules and enforceable professional regulations.⁴ The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law;⁵ to seek any lawful objective⁶ through legally permissible means;⁷ and to present for adjudication any lawful claim, issue, or defense.

EC 7-2 The bounds of the law in a given case are often difficult to ascertain.⁸ The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges from well-settled rules through areas of conflicting authority to areas without precedent.

EC 7-3 Where the bounds of law are uncertain, the action of a lawyer may depend on whether he is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different.⁹ In asserting a position on behalf of his client, an advocate for the most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as adviser primarily

assists his client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of his client doubts as to the bounds of the law.¹⁰ In serving a client as adviser, a lawyer in appropriate circumstances should give his professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law.

Duty of the Lawyer to a Client

EC 7-4 The advocate may urge any permissible construction of the law favorable to his client, without regard to his professional opinion as to the likelihood that the construction will ultimately prevail.¹¹ His conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.¹²

EC 7-5 A lawyer as adviser furthers the interest of his client by giving his professional opinion as to what he believes would likely be the ultimate decision of the courts on the matter at hand and by informing his client of the practical effect of such decision.¹³ He may continue in the representation of his client even though his client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position. A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor.¹⁴

EC 7-6 Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when his client is contemplating a course of conduct having legal consequences that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist his client in developing evidence relevant to the state of mind of the client at a particular time. He may properly assist his client in the development and preservation of evidence of existing motive, intent, or desire; obviously, he may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the state of mind of his client, and in those situations he should resolve reasonable doubts in favor of his client.

EC 7-7 In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As typical examples in civil cases, it is for the client to decide whether he will accept a settlement offer or whether he will waive his right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise his client fully on whether a particular plea to a charge appears to be desirable and as to the prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.¹⁵

EC 7-8 A lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decision-making process if the client does not do so. Advice of a lawyer to his client need not be confined to purely legal considerations.¹⁶ A lawyer should advise his client of the possible effect of each legal alternative.¹⁷ A lawyer should bring to bear upon this decision-making process the fullness of his experience as well as his objective viewpoint.¹⁸ In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible.¹⁹ He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of non-legal factors is ultimately for the client and not for himself. In the event that the client in a non-adjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.²⁰

EC 7-9 In the exercise of his professional judgment on those decisions which are for his determination in the handling of a legal matter,²¹ a lawyer should always act in a manner consistent with the best interests of his client.²² However, when an action in the best interest of his client seems to him to be unjust, he may ask his client for permission to forego such action.²³

EC 7-10 The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7-11 The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

EC 7-12 Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If

the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent.

EC 7-13 The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict.²⁴ This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to him, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he believes it will damage the prosecutor's case or aid the accused.

EC 7-14 A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to him should so advise his superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.

EC 7-15 The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial, or a combination of both. They may be *ex parte* in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency,²⁵ regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law.²⁶ Where the applicable rules of the agency impose specific obligations upon a lawyer, it is his duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify himself, his client if identity of his client is not privileged,²⁷ and the representative nature of his appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying his client.

EC 7-16 The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from his role in representing a person under investigation or on trial by a legislative body. When a lawyer appears in connection with proposed legislation, he seeks to affect the lawmaking process, but when he appears on behalf of a client in investigatory or impeachment proceedings, he is concerned with the protection of the rights of his client. In either event, he should identify himself and his client, if identity of his client is not

privileged, and should comply with applicable laws and legislative rules.²⁸

EC 7-17 The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligation to adopt a personal viewpoint favorable to the interests or desires of his client.²⁹ While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client.

EC 7-18 The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of his client with a person he knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he has the consent of the lawyer for that person.³⁰ If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting to represent himself,³¹ except that he may advise him to obtain a lawyer.

Duty of the Lawyer to the Adversary System of Justice

EC 7-19 Our legal system provides for the adjudication of disputes governed by the rules of substantive, evidentiary, and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known;³² the advocate, by his zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments.³³ The duty of a lawyer to his client and his duty to the legal system are the same: to represent his client zealously within the bounds of the law.³⁴

EC 7-20 In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently³⁵ according to procedures that command public confidence and respect.³⁶ Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the bases for standards of professional conduct set forth in the Disciplinary Rules.

EC 7-21 The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process;³⁷ further, the person against whom the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

EC 7-22 Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his lawyer may, in good faith and within the framework of the law, take steps to test the correctness of a ruling of a tribunal.³⁸

EC 7-23 The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client.³⁹ Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary

has done so; but, having made such disclosure, he may challenge its soundness in whole or in part.⁴⁰

EC 7-24 In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact.⁴¹ It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client. However, a lawyer may argue, on his analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

EC 7-25 Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, he is not justified in consciously violating such rules and he should be diligent in his efforts to guard against his unintentional violation of them.⁴² As examples, a lawyer should subscribe to or verify only those pleadings that he believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless he believes that his statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing him; and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

EC 7-26 The law and Disciplinary Rules prohibit the use of fraudulent, false, or perjured testimony or evidence.⁴³ A lawyer who knowingly⁴⁴ participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his client desires to have presented unless he knows, or from facts within his knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.⁴⁵

EC 7-27 Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that he or his client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.⁴⁶

EC 7-28 Witnesses should always testify truthfully⁴⁷ and should be free from any financial inducements that might tempt them to do otherwise.⁴⁸ A lawyer should not pay or agree to pay a non-expert witness an amount in excess of reimbursement for expenses and financial loss incident to his being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for his services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that his client and lay associates conform to these standards.⁴⁹

EC 7-29 To safeguard the impartiality that is essential to the judicial process, veniremen and jurors should be protected against extraneous influences.⁵⁰ When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with veniremen prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireman or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as he refrains from asking questions or making comments that tend to harass or embarrass the jurors⁵¹ or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, he could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected.⁵² When an extrajudicial commu-

nication by a lawyer with a juror is permitted by law, it should be made considerably and with deference to the personal feelings of the juror.

EC 7-30 Vexatious or harassing investigations of veniremen or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his behalf who conducts an investigation of veniremen or jurors should act with circumspection and restraint.

EC 7-31 Communications with or investigations of members of families of veniremen or jurors by a lawyer or by anyone on his behalf are subject to the restrictions imposed upon the lawyer with respect to his communications with or investigations of veniremen and jurors.

EC 7-32 Because of his duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or towards a venireman, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

EC 7-33 A goal of our legal system is that each party shall have his case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury.⁵³ Such news or comments may prevent prospective jurors from being impartial at the outset of the trial⁵⁴ and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial.⁵⁵ The release by a lawyer of out-of-court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal.⁵⁶ For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

EC 7-34 The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer,⁵⁷ therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal.⁵⁸

EC 7-35 All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party.⁵⁹ For example, a lawyer should not communicate with a

tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or lend himself to private importunities by another with a judge or hearing officer on behalf of himself or his client.

EC 7-36 Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings.⁶⁰ While maintaining his independence, a lawyer should be respectful, courteous, and above-board in his relations with a judge or hearing officer before whom he appears.⁶¹ He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-37 In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers.⁶² A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7-38 A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client.⁶³ He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so.⁶⁴ A lawyer should be punctual in fulfilling all professional commitments.⁶⁵

EC 7-39 In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law.

DISCIPLINARY RULES

DR 7-101 Representing a Client Zealously.

- (A) A lawyer shall not intentionally:⁶⁹
- (1) Fail to seek the lawful objectives of his client through reasonably available means⁷⁰ permitted by law and the Disciplinary Rules, except as provided by DR 7-101 (B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
 - (2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.
 - (3) Prejudice or damage his client during the course of the professional relationship,⁶⁸ except as required under DR 7-102 (B).
- (B) In his representation of a client, a lawyer may:
- (1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.
 - (2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client Within the Bounds of the Law.

- (A) In his representation of a client, a lawyer shall not:
- (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.⁷¹
 - (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.
 - (3) Conceal or knowingly fail to disclose that which he is required by law to reveal.
 - (4) Knowingly use perjured testimony or false evidence.⁷⁰
 - (5) Knowingly make a false statement of law or fact.
 - (6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.
 - (7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.
 - (8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.
- (B) A lawyer who receives information clearly establishing that:
- (1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.⁷²
 - (2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.⁷³

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.⁷⁴

- (A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.
- (B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-104 Communicating With One of Adverse Interest.⁷⁴

- (A) During the course of his representation of a client a lawyer shall not:
- (1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party⁷⁵ or is authorized by law to do so.

- (2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel,⁷⁶ if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.⁷⁷

DR 7-105 Threatening Criminal Prosecution.

- (A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

DR 7-106 Trial Conduct.

- (A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.
- (B) In presenting a matter to a tribunal, a lawyer shall disclose:⁷⁸
- (1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.⁷⁹
 - (2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.⁸⁰
- (C) In appearing in his professional capacity before a tribunal, a lawyer shall not:
- (1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.⁸¹
 - (2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.⁸²
 - (3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.
 - (4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused;⁸³ but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.
 - (5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.⁸⁴
 - (6) Engage in undignified or discourteous conduct which is degrading to a tribunal.
 - (7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107 Trial Publicity.⁸⁵

- (A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:
- (1) Information contained in a public record.
 - (2) That the investigation is in progress.
 - (3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.
 - (4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.
 - (5) A warning to the public of any dangers.
- (B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:
- (1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.
 - (2) The possibility of a plea of guilty to the offense charged or to a lesser offense.
 - (3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.
 - (4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.
 - (5) The identity, testimony, or credibility of a prospective witness.
 - (6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

- (C) DR 7-107 (B) does not preclude a lawyer during such period from announcing:
- (1) The name, age, residence, occupation, and family status of the accused.
 - (2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.
 - (3) A request for assistance in obtaining evidence.
 - (4) The identity of the victim of the crime.
 - (5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.
 - (6) The identity of investigating and arresting officers or agencies and the length of the investigation.
 - (7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.
 - (8) The nature, substance, or text of the charge.
 - (9) Quotations from or references to public records of the court in the case.
 - (10) The scheduling or result of any step in the judicial proceedings.
 - (11) That the accused denies the charges made against him.
- (D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.
- (E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.
- (F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.
- (G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:
- (1) Evidence regarding the occurrence or transaction involved.
 - (2) The character, credibility, or criminal record of a party, witness, or prospective witness.
 - (3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
 - (4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.
 - (5) Any other matter reasonably likely to interfere with a fair trial of the action.
- (H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:
- (1) Evidence regarding the occurrence or transaction involved.
 - (2) The character, credibility, or criminal record of a party, witness, or prospective witness.
 - (3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
 - (4) His opinion as to the merits of the claims, defenses, or positions of an interested person.
 - (5) Any other matter reasonably likely to interfere with a fair hearing.
- (I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

- (J) A lawyer shall exercise reasonable care to prevent his employees and associates from making an extra-judicial statement that he would be prohibited from making under DR 7-107.

DR 7-108 Communication with or Investigation of Jurors.

- (A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.
- (B) During the trial of a case:
- (1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.⁵⁸
 - (2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.
- (C) DR 7-108 (A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.
- (D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.⁵⁹
- (E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.
- (F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.
- (G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

DR 7-109 Contact with Witnesses.

- (A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.⁶⁰
- (B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.⁶¹
- (C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case.⁶² But a lawyer may advance, guarantee, or acquiesce in the payment of:
- (1) Expenses reasonably incurred by a witness in attending or testifying.
 - (2) Reasonable compensation to a witness for his loss of time in attending or testifying.
 - (3) A reasonable fee for the professional services of an expert witness.

DR 7-110 Contact with Officials.⁶³

- (A) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal.
- (B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:
- (1) In the course of official proceedings in the cause.
 - (2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.
 - (3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.
 - (4) As otherwise authorized by law.⁶⁴

CANON 8

A Lawyer Should Assist in Improving the Legal System

ETHICAL CONSIDERATIONS

EC 8-1 Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system.¹ This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system,² without regard to the general interests or desires of clients or former clients.³

EC 8-2 Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded.⁴ Likewise, legal procedures should be improved whenever experience indicates a change is needed.

EC 8-3 The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

EC 8-4 Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself, a client, or the public.⁵ A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

EC 8-5 Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or

condoned by lawyers. Unless constrained by his obligation to preserve the confidences and secrets of his client, a lawyer should reveal to appropriate authorities any knowledge he may have of such improper conduct.

EC 8-6 Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified.⁶ It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected⁷ or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism.⁸ While a lawyer as a citizen has a right to criticize such

officials publicly,⁹ he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system.¹⁰ Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

EC 8-7 Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by insuring that those who practice law are qualified to do so.

EC 8-8 Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.¹¹

EC 8-9 The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.

DISCIPLINARY RULES

DR 8-101 Action as a Public Official.

(A) A lawyer who holds public office shall not:

- (1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.
- (2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.
- (3) Accept any thing of value from any person

when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers.¹²

- (A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.
- (B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

CANON 9

A Lawyer Should Avoid Even the Appearance of Professional Impropriety

ETHICAL CONSIDERATIONS

EC 9-1 Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system.¹ A lawyer should promote public confidence in our system and in the legal profession.²

EC 9-2 Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.³

EC 9-3 After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to ac-

cept employment would give the appearance of impropriety even if none exists.⁴

EC 9-4 Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9-5 Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9-6 Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.⁵

DISCIPLINARY RULES

DR 9-101 Avoiding Even the Appearance of Impropriety.⁶

- (A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.⁷
- (B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.⁸
- (C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body,⁹ or public official.

DR 9-102 Preserving Identity of Funds and Property of a Client.¹⁰

- (A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) Funds reasonably sufficient to pay bank charges may be deposited therein.
 - (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law

firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

- (1) Promptly notify a client of the receipt of his funds, securities, or other properties.
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.
- (4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

DEFINITIONS*

As used in the Disciplinary Rules of the Code of Professional Responsibility:

- (1) "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.
- (2) "Law firm" includes a professional legal corporation.
- (3) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.
- (4) "Professional legal corporation" means a corpora-

tion, or an association treated as a corporation, authorized by law to practice law for profit.

- (5) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.
- (6) "Tribunal" includes all courts and all other adjudicatory bodies.
- (7) "A Bar association representative of the general bar" includes a bar association of specialists as referred to in DR 2-105(A)(1) or (4).

* "Confidence" and "secret" are defined in DR 4-101 (A).

CHAPTER 7: Court Rules

CHAPTER 8: Records Management

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GENERAL RECORDS MANAGEMENT STANDARDS
MENOMINEE TRIBAL COURT

1. CASE FILES

1.1 SEPARATE CASE FILE SERIES

Separate case file series should be maintained for the following case types:

- Criminal (CR)
- Traffic (TR)
- Non-traffic Ordinance Violation (FO)
- Civil (CV)
- Small Claims (SC)
- Family (FA)
- Probate (PR)
- Paternity (PA)
- Civil Commitment (CC)
- Adoption (AD)
- Juvenile (JV)
- Truancy (TU)

Summons in civil matters should list the case type and the case subcategory in the caption. Requiring the filing party to identify the type of action involved will save time in classifying cases.

1.2 CASE NUMBERING

Cases should be numbered according to the following numbering scheme. Lead zeros are not necessary in numbering cases, e.g., number a case "55" instead of "0055".

Important numbering conventions:

a. Criminal

1. Once a case is assigned a case number in a file series, it should remain with that number even though the nature of the case may change, e.g. a felony is reduced to a misdemeanor, or a misdemeanor is amended to a forfeiture or ordinance.
2. Criminal defendants are each assigned a separate case number.
3. Multiple charges against one defendant in one complaint are filed under one case number.

4. If a complaint contains multiple charges, the most serious offense should always be listed first and be used for categorizing the case.

b. Civil

1. A garnishment should be filed in the jurisdiction issuing the judgment. Small Claims or Civil.
2. Paternity cases are numbered separately from family cases.

- c. Reopened cases should continue to use the same case number and case folder.

1.3 RECEIVED VERSUS FILED CASE PAPERS

Process case papers in one of two ways depending on whether they have long term retention value (filed papers) or not (received papers).

a. Received Case Papers

Received papers are case papers that have value only as long as the case is active. They do not have long term retention value. These papers include:

Correspondence not pertaining to the substance of the case, e.g. transmittal letters, letters dealing with scheduling and affidavits of mailing

Receipts

Briefs, memorandum of law, memorandum of briefs

Copies of documents for which the court is not the primary office of record, e.g. police reports

Duplicate copies of pleadings and other documents

Interrogatories

Copies of documents attached to an Affidavit of Service

Judge's bench notes

Typed or hand written notes of court personnel.

Received case papers should:

1. Be placed in the case folder on the left hand side.
2. Be discarded after the completion of the appeal period.
3. Not be file stamped, entered on the court record or microfilmed.
4. If there is any doubt how to classify a paper, classify it as a filed paper.

b. Filed Case Papers

Filed case papers are all papers with long term retention value. These papers should be:

1. Stamped "Filed" and date stamped.
2. Entered on the court record card.
3. Filed in the case folder on the right hand side.
4. Microfilmed if the case is microfilmed.

1.4 FILE STAMPING

File stamping a case paper represents the clerk of court accepting custody of the document. With some documents such as the criminal complaint, file stamping also represents the commencement of the action. Certain guidelines for file stamping should be followed.

- a. Prior to file stamping any documents, check that the document is complete, especially that it is notarized and signed, if required. If it contains errors, refer to section 1.5 below.
- b. After each court appearance, check the inside of the file folder to see if there are case papers that have been submitted in open court and need to be file stamped.
- c. Do not file stamp any document unless required fees have been paid.
- d. File stamp only documents that have long term retention value (see section 1.3 above).
- e. File stamping includes indicating the date of filing either manually or by a date stamp.
- f. File stamp only the first page of each document received in the upper right hand corner of the document.
- g. Do not file stamp the following documents:
 - Drivers licenses
 - Arrest bond certification
 - Duplicate copy of the traffic citation and complaint
 - Any "received" case papers (see section 1.3 above)
 - Exhibits prior to submission in court.

1.5 PROCEDURES FOR CASE PAPERS WITH ERRORS

The following procedures should be used for documents filed with the clerk or register which contain errors.

- a. Notify the filing party if a case paper has one of the following errors:
 - incorrect case number
 - incorrect case caption
 - defective notice to appear, e.g. wrong appearance time or location
 - paper is not notarized, if required
 - paper is not signed, if required
- b. For other errors, file the case paper. A note may be attached to the paper indicating the error.

1.6 PROCEDURES FOR PLACING CASE PAPERS IN THE CASE FOLDER

The official case folder should be completely up-to-date no later than one day after a case paper is filed or a court appearance is held. Case papers should be placed in the case folder according to the following guidelines:

- a. Remove all colored backing sheets before placing a case paper in the case folder unless it contains a proof of service.
- b. Check case papers for the correct case name and number.
- c. If local procedures require clerks to initial case papers after performing a clerical duty, e.g. entering the paper on the court record card or judgment docketing, the case paper should be checked for the appropriate initials to ensure the clerical duty was completed.
- d. Place the "received" case papers on the left side of the case folder and case papers stamped "Filed" on the right side.
- e. Fasten case papers in the case folder according to the filing date, the most recent on top.
- f. Note the location of case papers and/or exhibits stored apart from the official case folder on the court record card.
- g. If an additional folder is needed, place the same case number on the second folder, which should be designated "#2" and place on the shelf behind the first folder which is to be marked "#1". When the case is closed, indicate the total number of folders on each.

1.7 CASE PAPERS KEPT SEPARATELY FROM THE CASE FOLDER

Some case papers and exhibits should be stored separately from the case folder in a separate envelope or another location when their volume interferes with the efficient handling of the case folder. These are:

- a. Exhibits (non-documentary exhibits and documentary exhibits if the volume warrants)
- b. Verbatim Reports of Proceedings
- c. Depositions
- d. Interrogatories

Storing depositions, interrogatories, and voluminous documentary exhibits in a separate envelope from the case folder is warranted because they are used infrequently and are quite bulky. The envelope should be marked with case number, designated "#1", "#2", etc. and placed on the shelf behind the case folder. Non-documentary exhibits and verbatim reports of proceedings should be stored apart because of the unique storage requirements of these records.

1.8 ACCESS TO THE CASE FOLDER BY NON-CLERICAL PERSONNEL

Case files, except locked and confidential files, are public records and must be made available for review by the public. However, there are guidelines that should be followed in making records available as follows:

- a. Fulfill requests to see records of the court only if the requesting party knows the name or case number. Any other requests such as for general research should be fulfilled only with the approval of the clerk of court.
- b. Folders should be reviewed by the public or parties only in the clerk's office.
- c. Any request for removal of a case folder from the office excepting judges, bailiffs obtaining folders for judges, court reporters, deputy clerks, and court administrators should be accompanied by a court order. No paper shall be kept longer than 10 days.
- d. Locked and confidential case folders can be reviewed in the clerk's office only by persons allowed access to such folders (see sections 5 and 6 below).

e. Procedures for allowing file folders to be used by non-clerical personnel:

1. Have the party complete an out-slip containing at a minimum

- Case number
- Date
- Requesting party's name, address and telephone number

NOTE: Color coded outfolders may be used in lieu of out-slips for frequent users or appearances, e.g. public defender, judges, other court staff.

2. When removing the folder from the shelf, replace it with an outfolder. The outfolder should contain a pocket for the out-slip and a plastic sleeve for any papers filed while the folder is out of the office or off shelf.
3. When the folder is returned, discard the out-slip except for confidential files. The out-slips for confidential cases should be placed in the case folder as a record of who has had access to the folder.
4. Check the outfolders periodically to ensure that folders are not off shelf more than 10 days. Any folder off shelf longer than the maximum should be returned or a new out-slip filled out by the user.

1.9 COURT SEAL AND OTHER STAMPS

The clerk of court should make use of stamps for the court seal and to minimize the need to type or write out commonly required words or phrases. The official court seal can be an ink seal printed by a rubber stamp. This means the raised or embossing seals traditionally used are not necessary.

Other uses of stamps include:

Confidential Stamp: Should include language such as "not to be opened with permission of the court."

Authentication Stamp: Should include date, "Filed", and case number.

Certified Copy Stamp: Should include language such as "This document is a full and correct copy of the original on file in the Office of the Clerk of Court, Menominee Tribe, State of Wisconsin." (signature and date inserted below.)

1.10 (Reserved)

1.11 (Reserved)

1.12 PROCEDURES FOR MAKING COPIES OF COURT RECORDS

The clerk's office may be required or requested to provide copies of documents filed with the court. The copies typically are for other courts; local, county and state agencies; or for the parties involved in an action. In certain cases, deputy clerks provide certified or exemplified copies of documents to other courts or agencies.

a. Certified Copy

Documents that can be certified are copies of an official record or report or entry therein or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office. The certified copy has the clerk's certificate that it is a true copy of the record on file and the court seal affixed to that copy.

1. Gather all documents to be certified.
2. Certify each document, using appropriate rubber stamp certification.

Note: If a party requests only a single certification to cover all the documents, comply with the request and charge for only one certification. Do not ask the party if only one certification is desired. A basic rule of certifying each individual document should be followed.

3. If a decree, order or motion incorporates additional documents such as property settlements or affidavits as a part of the total decree, order or motion, they are part of that decree, order or motion, and only one certification is necessary and charges should be assessed accordingly.
4. Stamp, and date the document with the appropriate stamp, and sign.
5. Charge the appropriate fees.

b. Exemplified Copy

An exemplified copy has the clerk's certificate that it is a true copy of a record on file and further certifies that the exemplifying officials hold the offices stated.

1. Gather all the documents to be exemplified;
2. Certify each document (although no certification charge is made);
3. Enter the case title and number and list each document on the exemplification certificate;
4. Use rubber stamp signatures of the clerk of court;
5. Sign the certificate at the bottom of the exemplification certificate in the space for "by _____."
Deputy
6. Charge appropriate fees.

1.13 CONSOLIDATION OF CASES

Own County

When cases are consolidated or joined the following procedures should be adhered to:

1. Write on each case folder "CONSOLIDATED WITH (case number)."
2. Write on each court record and index card the case number(s) with which that case is consolidated.
3. File the original order of consolidation in the case folder with the lowest case number and a copy in the other case folder(s), unless otherwise specified by the order of consolidation.
4. File subsequent documents in the case folder with the lowest number, unless otherwise specified by the order,
e.g., if the judge orders that pleadings for each case continue to be submitted.
5. Make subsequent court record card entries only on the card for the case where the documents are stored.
6. Leave each case folder in its present numerical sequence on the file shelf.

1.14 SEPARATION OF ACTIVE/DISPOSED CASE FOLDERS

Disposed case folders should be filed with active files, except for traffic cases.

Keeping active and disposed case files together uses up some unnecessary space in the office, since disposed case files could be moved to secondary storage areas after the last paper is filed. On the other hand, breaking up the numbered case folder sequence can cause uncertainty about whether some folders are lost or in secondary storage. The best way to handle this might be to wait until most of an annual series are disposed cases, then pull the active case files and move the rest to secondary storage. This saves space in the office area and allows quick access to the cases that are still active.

1.15 FILE FOLDER SPECIFICATIONS

a. Size

Present practice dictates that folders should be legal size except for traffic which are citation size plastic sleeves. However, the court should work toward achieving the goal of letter size file folders. This process can be started by using letter size forms internally.

Letter size folders are less expensive and take up less space. Legal size paper, filing equipment, and supplies cost 10 to 30 percent more than letter size. In addition, legal size filing equipment occupies approximately 30 percent more floor space than comparable letter size equipment.

b. Folder Weight

Folders should be 11 to 14 point weight.

This is the most typical weight of file folders used in courts. Thicker folders are more costly and consume too much space, while folders that are not this heavy can become easily torn, dog-eared, or otherwise damaged.

c. Open Sided Folders

Open sided folders, known as full cut folders, with 1/4" scoring marks up to 1", should be used.

An additional folder should be used if the case folder becomes more than one inch thick. The same case number should be placed on the second folder and designated as "#2 of 2". The original case folder should then be marked as "#1 of 2". Additional case folders should be placed on the shelf behind the first folder. When a third and fourth folder are added, the numbering must be updated: 1 of 3, 2 of 3, etc.

d. Tabs

Folders should have full cut side tabs for use in open shelf lateral filing equipment, or 1/3 cut top tabs for use in vertical drawer filing.

e. Fasteners

Fasteners on both the right and left sides of the file for holding case papers should be adhered or bonded to the inside of the folder to avoid catching on other case folders. Fasteners should be no larger than two inches in length. Metal fasteners are preferable to plastic.

f. Use of Color Coded Tabs for Numbering

Color coded tabs should be used for the case number.

Each number should have a unique color, i.e., all "1s" are the same color, all "2s" the same color, etc.

Although color coded number tabs will increase the cost of the folder, the resulting coding should greatly increase file security by making misfiles or missing folders readily apparent and should reduce personnel costs required to access case folders.

1.16 FILING EQUIPMENT

a. File Storage

Case files should be stored in open shelf lateral filing equipment or vertical drawer files.

EXCEPTION: Traffic folders should be filed in equipment compatible with the size of the traffic citation.

Open shelving is approximately 25 percent less expensive than drawer files and approximately 33 percent more space efficient than five-drawer vertical files. For an extensive discussion of filing equipment, refer to the publication Business Equipment and the Courts, Guide for Court Managers (National Center for State Courts, Publication No. R0030g, 1977).

b. File Supports

File supports are thin metal sheets which attach to the back and base of the file unit and prevent folders from falling over. Supports should be placed approximately 4" to 6" apart.

c. File Guides

File guides indicate inclusive case numbers and should be located at intervals of approximately 100 folders to make records easy to find.

d. Warehouse Shelving for Secondary Case Folder Storage

To best utilize storage area, warehouse type shelving with one cubic foot record storage boxes should be used.

2. (Reserved)

3. (Reserved)

4. COURT RECORD CARDS

4.1 COURT RECORD CARDS TO BE MAINTAINED

Court record cards should be maintained for each file series.

EXCEPTION: In traffic matters, court record cards are maintained only for contested matters.

4.2 INFORMATION TO BE ENTERED

a. Preprinted Section

- Case number
- Case name
- Attorneys
- Date filed
- Date disposed
- Judge assigned, code
- Judge at disposition, code
- Case classification, code
- How disposed, code

b. Body

- Date, title of "Filed" document
- Date, type of activity (see WCIS activity titles on
the top half of the activity section of the minute form) and indicate if minutes filed
- Date of trial, other appearance or review.
- When and how disposed
- Record of judgment order
- Location of papers filed apart from the case folder
e.g., non-documentary exhibits, financial disclosures.
- Fees for witnesses, officers, transportation and jurors (if not maintained in the accounting system)

NOTE: Do not enter received papers on the court record card. See section 1.3 above.

4.3 COURT RECORD CARD SPECIFICATIONS

a. Format

Court records should be maintained on cards. The cards should be printed with black ink on buff paper to produce the most readable microfilm image.

b. Card Weight

Ledger cards should be of 110 pound index paper to allow for frequent handling.

c. Card Size

Court record cards should be no larger than 8-1/2" x 11".

d. How Filed

Court record cards should be filed in case number order.

4.4 FILING EQUIPMENT SPECIFICATIONS

Court record cards should be stored in tub filing equipment.

Tub filing equipment allows the most convenient access to the cards. The equipment should be placed close to the personnel most frequently using the cards.

4.5 STORAGE OF CLOSED COURT RECORD CARDS

Court record cards should be kept separate in group files, unbound, until microfilmed.

5. INDEXES

5.1 PARTIES TO BE INDEXED

First named plaintiff/petitioner

First named defendant/respondent

Additional parties:

- Probate
 - Deceased
 - Incompetent/minor (guardianship)
 - Subject of will deposited for safekeeping
- Mental
 - Subject of the proceedings
- Adoption
 - Name of child prior to adoption
 - Adopting parents names
- Change of name
 - Name prior to the change of name

5.2 PARTIES NOT TO BE INDEXED

- Plaintiff in small claim actions
- Other than first named parties (unless on a case by case basis, indexing of other named parties is considered necessary).
- Personal representatives
- Guardian ad litem
- State, county or municipality, as a prosecuting party

5.3 CONTENTS OF THE INDEX

- Case title
- Case number
- Brief description of charges in criminal and traffic cases and date of offense
- Initial appearance date in traffic cases
- Child's name, in paternity cases

5.4 CONVENTIONS FOR INDEXES

The following are conventions to be followed in indexing. If there is potential confusion, create another index card as a cross reference.

- a. The first named party to an action is indexed by the first letter of the last name. The other named parties are listed on that index card but are not indexed separately.
- b. Names of firms, corporations and institutions are indexed as written, word-for-word, except that articles (A, The, etc.) are not indexed.
- c. Do not index articles (A, The, etc.)
- d. Names beginning with numerals are indexed as if the name is written out, e.g., 10th Street Corporation is filed under Tenth Street Corporation.
- e. Matters that are "in re"; "in the matter of"; "State of Wisconsin, ex rel"; are indexed by the name of the party for whom the action is brought. Exception: in actions affecting a child, index by the parent's name instead of the child's.
- f. Surnames beginning with de, De, des, Des, Mc, Mac, and O' are filed alphabetically just as they are spelled among the other surnames beginning with the same letters. Some examples of correct sequences are:

Desch, de Marais, Desoto, Des Roches, Dewey, DeWitt
Mabry, MacConnell, Madison, McKinley
Oldham, O'Leary, Olesen, O'Loughlin

- g. Doing business as or d/b/a should be indexed under the business name listing the parties real name on the index. For example:

John Smith	is indexed as	<u>Ace</u> Plumbing
d/b/a Ace Plumbing		(John Smith)

6. CASE MONITORING

One of the basic principles of the model system is that no case is allowed to be without a next appearance or review date. This principle assures constant court control of the case and gives a monitoring element basic to good records management. Some changes in current practice will be required. For example, currently many courts wait for attorneys in civil cases to request court action and do not monitor the status or age of the case pending notification from the attorneys that some hearing should be scheduled.

In the model system, a next action date for the next court appearance or a review date always will be set to ensure that the case is reviewed on a regular basis until it is ultimately disposed. The scheduling of next action dates and the setting of review dates are a matter of local policy. However, the model system does suggest time frames for some review activities.

The calendar card, which is created at case initiation as part of a multi-part court record or index form, is the control record in the model system for monitoring case status. The calendar card always is filed in a tickler file, by the next action date which may be a date for a court appearance or a review of the file to determine the next step. The tickler file represents a simple manual system for monitoring the status of each case throughout its active life. Use of the calendar card will prevent cases from becoming "lost" in the system. Calendar cards permit disposition of cases at an early point when appropriate (e.g., dismissal of a civil case when service is not obtained within the 60 day statutory time period).

Periodic review of such items as the filing of proof of service, answer, briefs, judgments (in family cases), annual accounts, and of outstanding warrants is difficult, if not impossible, to undertake in many courts because no effective mechanism for monitoring exists.

Case monitoring consists of the regular checking of the future action tub file (calendar card tickler file) to identify cases in which a scheduled activity appears not to have occurred and to determine what necessary follow-up action should be taken.

1. Each day, check the future action tub file for calendar cards which remain filed under the previous day in the tickler system.
2. If the event scheduled for the previous day was a hearing, determine if no appearance was made or if the clerk's or Register's office was not notified of the results of that hearing.

- a. If no appearance was made, notify the trial judge to determine action to be taken.
 - b. If an appearance was made, determine the results of the event including the date of next action; move the calendar card to the date of the next action; update the calendar book or calendar worksheet and the court record card.
 - c. If an adjournment was granted, move the calendar card to the next new date; update the calendar book or calendar worksheet and the court record card.
3. If the event scheduled for the previous day was the filing of briefs, notify the trial judge to determine action to be taken or for the scheduling of a new review date.
 4. Note the new date on the calendar book or calendar worksheet in accordance with local procedures.

See procedural descriptions of specific case types for other case monitoring events.

7. WARRANT/SUSPENSION FILE

7.1 DEFINITION OF WARRANT/SUSPENSION FILE

The warrant/suspension file includes all warrant, capias and orders of arrest issued in felony, traffic, non-traffic forfeitures, misdemeanor, family and paternity cases. This allows the court to determine if multiple warrants are outstanding against one individual. Clerks are responsible to check the warrant/suspension file when a defendant is apprehended on a warrant and make the court aware of any outstanding warrants.

An integrated warrant/suspension file which includes all warrants, capias and orders of arrest arising out of the above mentioned case types is recommended. Such an integrated file would assist in identifying persons, appearing in connection with one case type, who also are the subject of an arrest warrant in another case type.

7.2 PROCEDURES FOR THE WARRANT/SUSPENSION FILE

- a. When a warrant is issued, pull the calendar card and write on the card the date issued and type of warrant (capias, order for arrest, or bench warrant.)
- b. File the card alphabetically.
- c. For misdemeanor and felony cases, place a red dot on the case folder while the warrant is outstanding. This alerts clerks working with the files that the warrant exists and must be recalled immediately should the defendant appear.
- d. Periodically, check for cases which have exceeded the adopted warrant review date. For cases exceeding the limit:
 1. Prepare a request for dismissal for the prosecutor to complete and submit to the judge.
 2. Receive the signed order of dismissal and carry out normal case closing procedures including pulling the calendar card from the warrant/suspension file.
- e. When a warrant is satisfied, notify the arresting agency as soon as possible.

8. ACCESS TO COURT RECORDS

This section and sections 9 (Confidential Records) and 10 (Locked Records) above, deal with the issue of access to court records. The reader should refer also to section 1.7 (Access to Case Folders by Non-Clerical Personnel) below.

Court records are public records except for those records designated by statutes as either confidential or locked. The court cannot limit access to public records, except in the instance of family court matters when the court makes a written order finding that a record should be impounded, meaning access to the record is refused.

9. CONFIDENTIAL RECORDS

9.1 DESIGNATION OF CONFIDENTIAL RECORDS

The following records should be designated as confidential:

- a. Case folders and Related Records (court record card, indexes, court reporter notes, calendar cards and public calendar)

1. Juvenile Court Cases.

This section does not apply to proceedings for violation of traffic or any county or tribal ordinance.

With the exceptions noted, children's matters are to be treated as confidential. The exceptions are when the court is exercising its exclusive jurisdiction over proceedings against children 16 years or older for violations of traffic regulations, and children aged 16 or older for violations of law punishable by forfeiture or violations of county, tribal or other municipal ordinances.

2. Paternity Matters

Any record of the proceedings shall be placed in a closed file, except that access to the record shall be allowed to the parties and their attorneys or their authorized representatives.

3. Records of Incompetency Proceedings

All court records pertinent to the finding of incompetency are closed.

4. Records of Mental Commitment Proceedings

The files and records of mental commitment proceedings shall not be open to inspection by anyone except to the individual who is the subject of a petition and, if the action is in the nature of an involuntary commitment or recommitment, reexamination, appeal or other proceeding relating to detention, to the individual's attorney or guardian. In other situations, such records may be released only pursuant to the informed written consent or upon order of the court.

5. Records of Protective Placement Proceedings

Court records pertaining to a person who is under protective placement or for whom application has ever been made are not open to public inspection.

Information contained in these records may not be disclosed publicly in such a manner as to identify individuals, but such records shall be available on application for cause to persons approved by the court or at the request of the guardian, ward or attorney of a ward.

b. Other Records

1. Disclosure of Assets in Any Action Affecting the Family

Information disclosed under this section shall be confidential and may not be made available to any person for any purpose other than the adjudication, appeal, modification or enforcement of judgment of an action affecting the family of the disclosing parties.

2. Search Warrants

A search warrant shall be issued with all practicable secrecy and the complaint, affidavit or testimony upon which it is based shall not be filed with the clerk or made public in any way until the search warrant is executed.

3. Presentence Investigation Reports

After sentencing, unless otherwise ordered by the court, the presentence investigation report shall be confidential and shall not be made available to any person except upon specific authorization of the court.

4. Family Maintenance Payment Records

Access to records of monies received or disbursed which provides for maintenance payments or support of children to be made through the court is limited to the parties to the action, their attorneys and the family court commissioner.

5. Psychiatric and Psychological Reports Submitted in Not Confidential Cases.

6. Other Case Folders and Records Ordered to be Impounded

This provision allows for the impounding of records which is the refusal of access when the court in its discretion in the interests of public morals makes a special written order of the court. Such records should be treated as confidential records and the access and storage to these records handled as outlined in 9.2 and 9.3 below.

9.2 ACCESS TO CONFIDENTIAL RECORDS

Access to confidential records should be limited to the parties to the action, their attorney of record, person with a written order of the court and other persons specified in the statutes. If there is any question as to whether a person should be allowed access to a confidential record, he or she should be referred to a judge.

9.3 STORAGE OF CONFIDENTIAL RECORDS

a. Case Folders

The following procedures should be followed to ensure confidentiality:

1. The word "CONFIDENTIAL" should be stamped on each folder to warn court personnel that access to the folder is restricted.
2. Where the volume of use is low, the clerk or register may wish to consider storing the case folder in a locked file cabinet.
3. For frequently accessed confidential folders for which locked files are not used, the file area should be:
 - a. Away from the area accessible to the general public and unauthorized personnel and marked as a confidential file area.
 - b. Near the confidential file clerk's desk to allow close supervision.
4. Indexes for confidential cases should not be available to the public.

b. Other Case Papers

Other case papers designated confidential should be either stored apart from the case folder or placed in a sealed envelope in the case folder and removed whenever the folder is reviewed by a person not authorized access to such record.

c. Court Record Cards, Indices, Calendar Cards and Calendars

The above records should be stored in a manner to prevent revealing to unauthorized personnel the existence of a confidential record as follows:

1. Public calendars should not list case titles of confidential cases.
2. Indices to confidential cases should be maintained apart from the general index.
3. Court record cards to confidential cases should be kept in separate tub files.
4. Calendar cards for confidential cases can be filed with cards for non-confidential matters but should be stamped "CONFIDENTIAL."

9.4 COPIES OF CONFIDENTIAL RECORDS

No copy of a confidential record should be made without written authorization of the court unless authorized by statute or court rule.

10. LOCKED RECORDS

10.1 DESIGNATION OF LOCKED RECORDS

All records and papers pertaining to an adoption proceeding are designated as locked records and shall be kept in a separate locked file. No persons shall have access to such a record except on order of the court for good cause shown.

10.2 ACCESS TO LOCKED RECORDS

Only persons with a written order of the court shall be allowed access to locked records.

10.3 STORAGE OF LOCKED RECORDS

Locked records should be kept in a locked file and be accessible only by the clerk of court.

11. EXHIBITS

11.1 RECEIPT OF EXHIBITS IN THE COURTROOM

Receipt of exhibits in the courtroom should be carried out using the following procedures:

- a. Verify that admitted exhibits listed by a party as being submitted are included.
- b. Number the exhibits consecutively regardless of which party offers the exhibit.

Example

Plaintiff's	Exhibit 1
Defendant's	Exhibit 2
Defendant's	Exhibit 3
Plaintiff's	Exhibit 4

- c. Place a label (or a tag for large, bulky exhibits) on each exhibit with the following information:
 - Exhibit number
 - Case number(s)
- d. When using stamps or stickers, be careful not to obliterate important portions of the exhibit or make it difficult to identify the exhibit as to case number, exhibit number, etc.
- e. Do not use tags unless absolutely necessary, but when necessary, use a heavy tag rather than a slip of paper, which can easily become detached.
- f. Place small exhibits in small fastener-type envelopes, marked properly and fastened (one exhibit to an envelope, if possible).
- g. Under no circumstances mark filed papers as exhibits. Certified copies may be used as exhibits.
- h. Under no circumstances should a deposition be marked as an exhibit. However, exhibits to a deposition may be marked as such.
- i. If any exhibit is presented in a container, inquire if the container is to be included as part of the exhibit.

- j. After an exhibit has been admitted, do not allow it to leave the possession of the clerk without a court order or until it has been determined that the case will not go to appeal, unless counsel moves to withdraw an exhibit and the court so orders. Rejected exhibits are returned to parties although the identification remains on the exhibit list.
- k. Maintain an exhibit list form containing the following information (see Form No. GF102 in Forms Manual):
 - Date of Hearing/Trial
 - Date Judgment Filed
 - Case number
 - Case title
 - Attorneys' names
 - Exhibit description
 - Received
 - Offered
 - Withdrawn

11.2 STORAGE OF EXHIBITS DURING TRIAL

Storage of exhibits should be carried out using the following procedures:

- a. Keep all exhibits in a locked security file in the courtroom during the trial. Narcotics, weapons, money, valuable or sensitive materials should be secured in a file cabinet during court recesses, lunch hours and at other times when exhibits are unattended by the courtroom clerk.
- b. If a security storage cabinet or vault is not available in the courtroom, place narcotics, weapons, money, valuables or sensitive materials in the clerk of court's vault each night.
- c. Oversized exhibits except for sensitive or dangerous items may be stored in the courtroom, if the courtroom is kept locked.
- d. Keep rejected exhibits and others to be withheld from the jury separate from the admitted exhibits during the trial.
- e. Keep admitted exhibits in numerical order during the trial.
- f. If counsel or the court take an exhibit from the clerk during trial, make a note of the number of the exhibit and who has taken it.

11.3 RETURN OF EXHIBITS AFTER TRIAL

Exhibits should be disposed of after trial using the following procedures:

- a. At the conclusion of civil and family matter trials, ask the attorneys "on the record" whether they will stipulate to the release of all or a portion of the exhibits. If so stipulated, have each party sign a stipulation and order releasing exhibits. (See Form No. GF102 in Forms Manual.) If possible, have the stipulation signed in advance.
- b. At the conclusion of criminal, traffic, and juvenile offender trials, if there is an acquittal, return the exhibits to the party submitting them. If there is a conviction, take exhibits to the permanent exhibit storage area. Weapons should be sent to the crime laboratory and drugs to the confiscating agency.
- c. If the exhibits are not removed by the attorneys, store them according to the requirements of the General Records Retention Schedule and Disposition Procedures.

12. COURT MINUTES

12.1 COURT MINUTES TO BE MAINTAINED

The following is based on Wisconsin statutory requirements for court minutes found primarily in Sections 59.39(4) (for clerks of court) and 851.72(3) (for registers in probate) and should be a useful guide for recording of minutes.

12.2 PURPOSE

Court minutes are to be a brief statement of proceedings in open court. The minutes are intended to provide the court with an abbreviated summary of each proceeding which can be used as a basic reference in recalling the activity which has occurred in a case. Minutes are not intended to be a substitute for the official record made by a court reporter. If a detailed record of the proceeding is requested, the reporter should be consulted.

12.3 CONTENT

Minutes should not record the substance of the case. The minutes or legal arguments of the attorneys should not include the facts of the case, the content of testimony or legal arguments of the attorneys.

a. For clerks of court, Section 59.39(4) only requires that minutes record the following:

1. motions and orders during trial,
2. names of witnesses,
3. jurors drawn,
4. the officer sworn to take them in charge,
5. jury verdicts, and
6. openings and adjournments of court.

b. For registers in probate, section 851.72(3) only requires in proceedings under Chapters 851-880 that the minutes record the following:

1. a brief statement of the proceeding,
2. all motions made and by whom,
3. all orders granted, and
4. the names of all witnesses sworn or examined.

12.4 PROCEDURE

The following are guidelines for the preparation of court minutes:

- a. To the extent possible, fill out required heading information prior to court appearances.
- b. Minutes should be prepared in the courtroom at the time of the activity being recorded. Minutes should be handwritten as legibly as possible so they will not have to be typed or rewritten after the court appearance. Typing minutes after court is strongly discouraged. The only circumstance which justifies the typing of minutes is when the person charged with taking minutes has illegible handwriting. Care should be taken in hiring deputy clerks to ensure legible handwriting.
- c. After court, review minutes to determine what, if any, follow-up work is required.

13. WITNESS RECORDS

Records of witness appearances should be maintained to be used in the preparation of cost bills using the following procedure:

- a. Maintain at least the following information on the witness records:
 - Names, addresses and zip codes
 - Dates of attendance (on witness roster)
 - Distance traveled
- b. Designate if the witness is a state, federal, county or city employee, specifically if a police officer. If known, indicate "on-duty" or "off-duty" for out-of-town police officers.
- c. Enter above information on the court record card if not recorded in accounting records.

14. JUROR RECORDS

Records of juror appearances should be maintained for the purpose of making out a cost bill using the following procedure:

- a. Maintain at least the following information on the juror record:
 - Names, addresses, zip codes
 - Dates of attendance
 - Distance of travel
- b. Enter individual information in accounting records and total jury costs on court record card.

15. COURT REPORTERS' NOTES

Court reporters' notes should be maintained using the following procedures:

- a. Mark on the first page of each day's notes, the name of the court reporter, date of proceedings reported in the notes.
- b. Separate daily notes.
- c. Store in filing equipment or storage boxes by court reporter name. Mark the outside of the storage container with the year, type of notes and name of court reporter. Store the notes in a secondary (inactive) storage location.

16. COURT CALENDARS

Court calendars should be prepared daily or weekly, distributed to court personnel and officers and posted in public corridors to assist persons attending court. The following guidelines should be observed in preparing calendars:

- a. For high volume court appearances such as initial appearance (return date) in traffic cases and first appearance in criminal cases, it is recommended that the public calendar include only the name of the type of hearing and scheduled time, (e.g., "Traffic Initial Appearances 9:00-11:00 a.m."). However, a calendar listing individual cases in high volume court appearances may be prepared for use by the clerk and other courtroom personnel if required by local procedure.
- b. For other appearances, the calendar, listing individual cases, should be typed from the calendar book or notebook.
- c. Calendars should be distributed at a minimum to:
 - Judge
 - Prosecutor
 - Lay Advocate
 - Clerk of Court
 - Bailiff
 - Public corridor outside the courtroom
- d. Public court calendars should be discarded after the calendar is completed. An exception is the initial appearance calendar in traffic which is used for taking minutes. The calendar is used to guide the deputy clerk as to the appropriate action to take after court and then routed to the accounting clerk as a guide to the disbursement of money held in trust or fines received.
- e. Appearances in confidential matters should either not be placed on the public calendar or noted only as a "hearing" without listing the case name.

17. INACTIVE RECORDS STORAGE

17.1 OBJECTIVES OF THE INACTIVE RECORDS STORAGE PROGRAM

The objective of an inactive records storage program for a court is to establish a system for managing the inactive records required by statute to be maintained. Since each court has unique financial, spatial and work volume considerations, a separate program must be developed for each court. The program should include consideration of issues such as whether to use microfilm; if microfilm is used, which records should be microfilmed; costs of primary (active) storage locations versus secondary (inactive or off site) locations, etc. The following outlines the considerations in developing a long term retention program.

17.2 RECORDS RETENTION SCHEDULE

Current statutes require the permanent retention of almost all court records either in hard copy or microfilm form unless a judge deems the record "obsolete and useless". The proposed retention schedule recommends when each record series should be deemed obsolete and useless. The recommended time periods are based on the useful legal life of the record. The research value of the record may extend beyond the useful legal and administrative life. As its resources permit, the State Historical Society may selectively retain records of permanent research value. It may not be possible for the State Historical Society to retain all records of potential research value, particularly where the records have not been locally microfilmed.

17.3 RESIGNATION OF CASE PAPERS THAT DO NOT HAVE LONG TERM RETENTION VALUE

Certain case papers have value only as long as the case is active. They do not have long term retention value. These papers include:

- a. Correspondence not pertaining to the substance of the case, e.g., transmittal letters, letters dealing with scheduling and affidavits of mailing.
- b. Receipts
- c. Briefs, memorandum of law, memorandum of briefs.
- d. Copies of documents for which the court is not the primary office of record, e.g., police reports, probation reports.

- e. Duplicate copies of proceedings.
- f. Copies of documents attached to an affidavit of service.
- g. Judge's bench notes.
- h. Typed or handwritten notes of court personnel.
- i. Interrogatories.

These papers are not file stamped upon receipt, but are placed on the left side of the case folder. At case disposition, these papers are discarded from the file folder.

17.4 DETERMINATION OF WHETHER TO USE MICROFILM

One consideration in the long term retention of records is whether or not to use microfilm. This issue should be studied carefully as the decision to use microfilm represents a significant investment:

a. Cost Considerations:

Equipment Costs

Microfilm equipment (camera, processor, inspection equipment, duplicator, readers and reader-printers), and amortization of equipment.

Work stations for personnel
Maintenance of equipment

Supply Costs

Film supplies
Forms (targets, control forms)
Miscellaneous

Manpower Costs

Salaries (staff and supervisory)
Overhead

Miscellaneous

Darkroom installation
Site preparation

b. Volume of Filings

The National Center for State Courts in its publication, Microfilm and the Courts, A Guide for Court Managers,

outlines the following volumes as the minimum to consider in establishing a totally in-house microfilming system.

<u>Record type</u>	<u>Volume per year</u>
Active case files	6,000 new cases
Instruments	63,000 pages
Citations	500,000 pages
Inactive records	500,000 pages

Courts with volumes less than these should consider either use of a service bureau or not microfilming.

c. Required retention periods

The legal requirements for retention of court records should be considered. Some records, because of their limited retention period should not be microfilmed. Any record required to be kept for 10 years or less should not be microfilmed.

d. Lack of available storage space

Microfilming saves space, but it is not the only way to make better use of limited storage. Before deciding on a microfilm program as the best way to save space, the court should evaluate other ways to make more space. All records eligible for destruction or transfer to the Historical Society should be disposed of, all storage equipment should be the type that makes best use of available floor space, and off-site storage should be used to remove the infrequently used records from the primary storage areas.

17.5 MICROFILM PROGRAMS

a. Approval of microfilm program

Any microfilm program adopted by a local court should be carefully reviewed and approved by the proper authorities.

b. Rent, lease or purchase of equipment

The option to rent, lease or purchase microfilming equipment will be dependent upon the volume of microfilming, the funds available to the court and upon the vendors that are accessible to the court. No equipment should be rented, leased or purchased without first requesting competitive bids from the available vendors in the area and having samples of court records filmed on the equipment.

c. Use of Microfilm in Court Operations

If a microfilm program is implemented, the following guidelines should be observed:

1. The original microfilm copy (silver halide copy) of court records and indices to the film should be stored off-site.
2. A working copy (diaz or risicular) of microfimed records should be maintained for references to closed records. Silver film should be used only as a security/backup copy as it is brittle, easily scratched and more expensive to produce than diazo duplicates.
3. Paper copy should be destroyed or sent to the State Historical Society.
4. Reader/printers should be provided to accommodate the needs of administrative and clerical personnel and the public who need to use microfilmed records and/or produce a paper copy of the record. The number of reader/printers necessary will depend upon the type of microfilm program in operation.
5. Fees should be established for providing microfilm or paper print duplicates to users. The fee charged should be the same as for photocopies of court records.
6. Procedures for servicing equipment and maintaining proper supplies should be established.

d. Document Standards for Microfilming

To ensure a high quality microfilm image and minimize microfilming costs, the following document standards are required for documents both received and created by the court:

1. Documents should be no larger than 8-1/2" x 14".
2. Documents should be uniformly white, smooth in finish, unglazed, relatively opaque and free of watermarks and background logos.
3. Writing, printing, typing, and stamping inscribed on the document should be in black or dark blue ink.

4. Inscriptions should be solid (the lines forming each letter must not have unintentional blank or light spots), uniform (the entire letter must be the same darkness), dense (each letter must be very dark), sharp (the demarcation between each letter and the background must be abrupt), and unglazed (letters must not be glossy, i.e., reflect back light like a mirror).
 5. Machine printing should be 10 point or larger. Typing should be pica or larger.
 6. If a copy of an original document is to be filmed, it should be a positive reproduction (i.e., black or dark blue lettering on a white background). Carbon copies are not acceptable in place of the original.
 7. Documents should be on 20 pound paper stock. If lesser paper stock is used, inscriptions should be on one side of the paper only. (Inscriptions on the back of the page being filmed may "show through" and become visible on the other side, resulting in ghost images on the microfilm.)
 8. Lines of text should be separated by the smallest number of spaces possible that allow convenient readability.
 9. Tears must be mended and clips and staples removed before microfilming any document. Folded documents should be unfolded and flattened before filming to eliminate creases which create shadows on the film image.
 10. The above standards should be printed and posted in the office and distributed to frequent users (attorneys, abstractors, etc.) before implementation of the standards if they differ from current standards.
- e. Requirements to have Microfilm Deemed an Original Record
- Revision to the current microfilm standards is under study. Clerks and registers should refer to the statutes for the latest requirements to have microfilm deemed an original record.
- f. Inspection and Quality Control of Microfilm
1. Visual Inspection

Each roll of film should be visually inspected for obvious defects in microfilming. For a thorough listing of these defects, see "Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver Gelatin Microfilm of Documents", National Micrographics Association, MS23-1979.

Visual inspection should be performed using a light box, eye loop and cotton gloves. Original silver film should not be inspected on a reader because the reader can scratch the film, or handled with bare hands because skin oils can break down the film.

2. Density Quality Control

For an acceptable negative microfilm image, the densitometer should read between 0.9-1.2; the closer to 1.0-1.10, the better the density. Densities outside 0.9-1.2 do not meet standards and such film should be rejected.

The beginning and end of each roll of film should be checked using a densitometer to determine the degree of darkness or lightness of the image background. A blank piece of paper of the same condition and color as the documents being filmed should be microfilmed on the roll and used for this test.

The density between the frames of film (base plus fog density) should be measured using a densitometer to determine the level of gray cast caused by film characteristics and processing chemicals. This cast may prevent the films from being totally clear. For a negative microfilm image, the densitometer should read below 0.10 between images.

3. Resolution Quality Control

16 mm Film

Microscope should resolve a test pattern yielding a minimum of 120 lines per mm at 24x reduction or a reading of 5 using a quality index method of evaluating resolution for different reduction ratios.

35 mm Film

Microscope should resolve a test pattern yielding a minimum of 140 lines per mm.

Standard test pattern targets should be shot at the beginning and end of each role.

4. Storage of Original Silver Microfilm

The original silver microfilm required for permanent retention should be stored in security microfilm storage and never be used for daily operations. The State Historical Society offers free storage of security microfilm in its climatically controlled film vault.

5. Inspection of Microfilm

Microfilm should be inspected by an independent contractor on a periodic basis. At least one roll of microfilm should be tested each month for any residual chemicals remaining on the film after processing that may affect the archival quality of the film. Testing for archival quality requires the use of the methylene blue test. The test must be performed within two weeks of processing the film. The concentration of residual chemicals (hypo) must be less than 0.7 micrograms per square centimeter for permanent microfilm; higher concentrations might lead to film deterioration and blotching.

g. Guidelines for Microfilming Locked and Confidential Records

Microfilming of locked and confidential records should be carried out using the following guidelines:

1. Locked and confidential records should not be removed from the court for microfilming
2. Locked and confidential records should be filmed on a reel separate from non-confidential records
3. Storage and access to locked confidential records should be as outlined in Section 10 (LOCKED RECORDS), and if applicable, Section 9 (CONFIDENTIAL RECORDS).

h. Microfilm Equipment Guidelines

1. Microfilm Cameras and Film

The preferred camera for filing inactive and instrument-type documents is an office record table-top 16 mm planetary camera. The camera should have:

- Automatic exposure control or selector buttons
- Removable head
- Hand-activated shutter switch
- Copyboard demarcation

Basic guidelines for filming are as follows:

- a. On 16 mm, 100' roll film, the film should:
 - Be silver halide camera film
 - Be unperforated
 - Be panchromatic
 - Have an anti-halation undercoating
 - Have a safety base
 - Be a minimum of 4 mil. thick
 - Resolve at 400 lines per mil. or higher
- b. Exposed film should achieve a minimum of 120 lines per mil. or higher.
- c. Documents should be filmed in simplex-comic mode.
- d. The reduction ratio should be within 20 to 28X. 24X reduction is generally preferable for source document microfilming.

2. Processing Microfilmed Records

Due to the expense and high level of expertise required to properly process film, processing should be done by an authorized commercial or state service bureau unless the volume of a county-wide microfilm operation justifies the expense of in-house processing.

Commentary:

Responsibility for adequate film quality should be established and provided for in the contract with the service bureau.

3. Readers

Readers for 8-1/2" x 11" and 8-1/2" x 14" documents filmed on roll film should have the following specifications:

- The reader's screen size should be 11" x 11" or larger with a magnification that is roughly equivalent to the reduction ratio

- An image rotation feature
- Motorized film drive
- Automatic and self-threading capability (optional)
- Frame locating by manual retrieval, odometer retrieval, or image count ("blip") retrieval

Fiche and jacket readers should have a screen size of 11" x 11" or larger and be equipped with an appropriate grid index. Magnification should be equivalent to the reduction ratio at which the documents were filmed.

4. Printers and Duplicators

Printers should be of the electrostatic or dry silver variety and produce at least an 8-1/2" x 11" paper copy.

If diazo duplicates are produced in-house, a table-top developer that is compatible with the film media (fiche or roll film) should be used. Personnel should be thoroughly trained in the developing process.

Commentary:

The duplication process requires the use of ammonia and heat. The vendor should provide training in the use and safety precautions necessary with these procedures.

18. SAFETY AND SECURITY STANDARDS

18.1 STORAGE LOCATION CRITERIA

In establishing a storage facility in which case files are maintained, the following guidelines should be adhered to:

- a. The room in which records are located should not be susceptible to water seepage, flooding or leakage from the roof.
- b. Records should not be close to water pipes or combustible materials.
- c. The building should be treated for insects, rodents, termites, etc., that may damage records.
- d. The floor of the room in which records are located should be inspected and rated before placing heavy filing equipment in the room.
- e. Room temperature and humidity should be held relatively constant. Air conditioning is recommended.
- f. Storage of microfilm for permanent records must be in a highly controlled environment. Temperature should not exceed 70 degrees F. and 40 percent relative humidity -- changes should not exceed 5 degrees in temperature or 5 percent relative humidity in a 24-hour period. This controlled atmosphere is important since high humidity and temperature can foster the growth of mold and fungus which can damage the film. The State Historical Society offers free storage of security microfilm in its climatically controlled film vault.
- g. Security precautions should be taken against the entry of unauthorized persons into rooms in which records are located.

18.2 PROTECTIVE MEASURES/POLICIES

The following precautionary measures and records management policies should be taken to ensure the safety and security of court records:

- a. Files should be arranged in case number order so that misfiles and missing files can be easily identified.
- b. The rooms in which records are stored should be kept clean and free of dust and other substances that may damage the records.

- c. Smoking prohibition should be enforced in the records room and in the surrounding area. Signs should be posted to this effect.
- d. A smoke detector that provides adequate early warning should be installed in the records room. The system should have an alarm that is hooked directly to the Fire Department or the clerk's office.
- e. An automatic fire extinguishing system should be installed in the records room. A Halon-gas system which will extinguish fires with minimal damage to the records is the preferred system. If a water sprinkler system is used, it must be carefully installed since the damage resulting from a sprinkler discharge could be greater than fire damage. The sprinklers should be rated at 250 to 286 degrees F. to allow time for the fire to be extinguished with minimal water damage and each sprinkler head should discharge independently to extinguish a localized fire without discharging the whole sprinkler system.
- f. Inactive records that must be retained and have not been microfilmed should be tightly packed into corrugated cardboard storage boxes so they are less likely to burn in the event of a fire.
- g. If inactive paper records are stored in the court, open steel warehouse shelving should be used. The shelves should be strong enough to withstand the anticipated weight of the records. (Most storage boxes weigh from 30 to 50 pounds when filled with records.)
- h. If the court is storing the original copy of a micro-filmed record for permanent retention, the film should be wound on non-corroding reels and placed in non-corroding and acid-free containers. (Corrosive metals, rubber bands, and ordinary cardboard boxes could damage the film over time.)

19. RECORDKEEPING EQUIPMENT AND SUPPLY PROCUREMENT

Procurement of recordkeeping equipment and supplies should be carried out using the following guidelines:

- a. When making major purchases such as copiers, microfilm cameras, cash registers, file folders, letterhead, etc. the court should request competitive bids from area vendors.
- b. A Request for Proposal (RFP) should be sent to all vendors in the area that offer a particular piece of equipment or type of supplies. The RFP should include:
 - System concept summary, i.e., the basic needs and wants which the system or supplies should fulfill
 - Requirements of the equipment or supplies including a physical description of the item(s), an activity description (what the equipment should do), performance requirements (response time, accessibility, expansion capabilities, etc.) and an information description (volume, type, origin and destination of information which is being handled and, when possible, envisioned files and reports produced by equipment)
 - Implementation requirements, i.e., the court's timetable for implementation of the system or need for the supplies.
- c. The contract with an equipment vendor should include but not be limited to the following:
 - Term of contract and contract termination
 - Installation and delivery dates
 - Provision for liquidated damages, i.e., damage assessments for delayed installations or late performance
 - Standards of performance and acceptance of equipment, i.e., the procedures and conditions under which equipment will be accepted before payments will accrue
 - Terms of use, i.e., details of how various levels of use are defined and assessed charges such as extra use charges
 - Equal employment opportunity guidelines
 - Security and privacy guidelines

- Terms for maintenance of equipment
- Provisions for allowable substitutions, additions, and conversion, i.e., basic terms under which equipment may be substituted or added to the system
- Provisions for allowable alterations and attachments, i.e., conditions under which users may alter equipment
- Terms for training and technical services
- Provisions for site preparation
- Terms for transportation, installation, relocation, and return of equipment
- Risk of loss or damage and contractor liability
- Supplies (these are usually separately contracted, but must meet vendor's specifications)
- Details to title of ownership or transfer of title
- Terms of purchase option
- Warranty
- Statement of taxes due
- User's obligation, approvals (to explain user's funding procedures)

20. FORMS DESIGN

The establishment of standard specifications and design criteria for court forms is the first phase of the effort to develop simplified, efficient and unified forms. The standards, outlined on the following pages, should be used to design the court forms to support the recordkeeping system and should serve as guidelines.

Simplification and standardization of forms and procedures is expected to produce the following results:

- Consolidation and simplification of present forms in terms of wording, size and appearance;
- Standardization of the placement of information on court forms to maximize clerical efficiency and the effective processing of information;
- Elimination of useless or unnecessary forms and the development of a procedure to curb future proliferation of unneeded records;
- Facilitate the timely processing of cases through the court;
- Improve communications between litigants, attorneys, court staffs, judges and other justice system personnel;
- Improve public opinion through the favorable reaction to easily understood forms which expedite processing; and
- Achieve cost savings through the reduction in paper usage, printing, staff time, and storage.

1. Standard Specifications for Printing of Forms.

1.1 Five-eighths inch stub allowance at top for binding on multi-part forms; a minimum of one-fourth inch border on each side and a minimum of one-half inch at the bottom.

1.2 Standard two-hole punch at the top for file fasteners or binding. (1/4" holes 2-3/4" center to center.)

1.3 Standard header across the top of the form including:

"Menominee Tribal Court" and other identification at the top left corner,

Parties to the action at the top left,

Form title in bold print at top center,

Case number and office box at top right for "filed" or if used, "received" stamp.

- 1.4 Form number, date of last revision and form name in the lower left-hand margin.
Example: Form No. CR200, (2/82) Notice to Appear
- 1.5 Applicable court rule or statute in the lower right hand margin.
- 1.6 If on a form-by-form basis it is considered desirable, distribution list should be printed on the first page of the form in the lower left hand corner immediately above the margin line.
- 1.7 On multi-part forms, copy designations printed in the lower center margin.
- 1.8 White paper for the original; copies may be color coded.
- 1.9 Print size of six or seven point for captions, eight or ten point for narrative and 12 point for titles. Type style should generally be sans serif.
- 1.10 Vertical spacing for typewriter entry of data allowing six lines to the inch.
- 1.11 Fold marks printed in left margin so appropriate address will appear in standard #10 window envelope.
- 1.12 Double typewriter spacing for all handwritten entries (1/3").
- 1.13 Tab stop indicators across the top, using as few as possible.
- 1.14 Printed on letter-sized paper.
- 1.15 One page forms, if possible. Printing on reverse side of form should be tumble printed.
- 1.16 Forms for each case type may be color coded (or printed on pastel colored paper-easier to duplicate or microfilm).

2. Form Numbering

A form numbering system should be developed to improve forms management and allow easier reference in procedures manuals.

2.1 Identification of case type. (Examples)

General	GF	100
Criminal	CR	200
Traffic	TR	300
Civil	CV	400
Small Claims	SC	500
Family	FA	600
Paternity	PA	700
Probate	PR	800
Civil Commitment	CC	900
Adoption	AD	1000
Guardianship	GS	1100
Accounting	AC	1200

2.2 Numbering subsequent parts of a multipart form when they are different from the first part. Add a decimal to the form number as follows: .1 to ply 2, .2 to ply CR200.2, CR200.3)

2.3 Date (month and year) of last revision.

2.4 Designation of the form as a standard form, if applicable.

3. Conventions for the Body of Forms

3.1 Organization

The body of forms should be organized into functional components. Each functional component should be introduced by a title in all capitals preceded by an arabic number. The functional breakdowns necessary are dictated by each form and should be sequential. Some general categorizations are as follows:

- a. Motions and petitions
 - 1. MOTION/PETITION
 - 2. AFFIDAVIT/VERIFICATION
- b. Warrants and summonses
 - 1. WARRANT/SUMMONS
 - 2. RETURN/AFFIDAVIT OF SERVICE
- c. Orders
 - 1. BASIS OR INTRODUCTION
 - 2. FINDINGS AND/OR CONCLUSIONS
 - 3. ORDER

3.2 Paragraph Numbering

The major components of each paragraph should be numbered according to the following numbering system:

- 1. Paragraph Title
 - 1.1 a. (1) (A) (i)

3.3 Spacing of Body

Spacing of lines for entry of information should correspond with standard (six lines to the inch) typewriter spacing.

3.4 Predrawn Lines

- a. Predrawn lines should be provided for any blank which may be filled in by handwriting.
- b. Predrawn lines should be used for data entries that need to be entered and may be overlooked.
- c. Predrawn lines should be avoided elsewhere.

3.5 Check boxes

- a. Check boxes should be used wherever identifiable alternatives to choices exist. For example:
 - ☐ By delivery to the person named
 - ☐ By mailing to the person named at the address of service
- b. The check box should be placed in front of the choice, unless a column of yes/no responses follows a series of questions.
- c. Where check boxes represent alternative choices, the added use of number or letters should be avoided, unless needed for data entry purposes.

3.6 Signatures

- a. On criminal forms, if the defendant is required to sign a form, his or her lawyer should sign the form also.
- b. If the handwritten signature of a party is required, a line for the typed or printed name in addition to the signature should be provided to avoid problems in deciphering the signature.
- c. The title of the signator, address and telephone number should be listed on forms where that information would be of use to the court or other parties.

3.7 Language Conventions

In general, simple concise language is preferred. Some language conventions are as follows:

Preferred

attorney

is accused of

the State

Preferred

appeal

case record to date

I am

Instead of

counsel or lawyer

is charged with

the plaintiff

Instead of

review

records and files, etc.

Affiant is

3.8 Capitalization for emphasis

The following terms should be printed in all capitals or bold print

- a. YOU ARE SUMMONED
- b. YOU ARE COMMANDED
- c. IT IS ORDERED
- d. FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST
- e. FAILURE TO APPEAR AND DEFEND WILL RESULT IN A JUDGMENT BEING RENDERED AGAINST YOU IN THE AMOUNT DEMANDED

There should be a minimum use of capital letters, underlining and italics only where necessary for emphasis.

4. SUBSTANTIVE DESIGN CRITERIA WILL INCLUDE

- 4.1 Forms designed to be self-explanatory wherever possible--when extra instructions are necessary, the reverse side of a separate cover sheet will be included.
- 4.2 Use of verified disclosure under penalty of contempt of court when a jurat is not specifically required by statute or court rule.
- 4.3 Compliance with statutes and court rules.
- 4.4 Design to achieve maximum efficiency and clarity in processing.

4.5 Conformance with the approved printing and design criteria.

5. FORMS DESIGN ILLUSTRATION

The form produced on the following page is illustrative of many of the design standards discussed.

6. INSTRUCTIONS

A camera-ready copy of each form should be on special enamel paper. This camera-ready form can be used for immediate duplication either by the court or by a local printer. Both time and storage space can be saved through use of these forms, which can be produced according to the court's individual needs rather than stocking huge supplies.

When printing is done, standard specifications for printing must be observed. Allowing sufficient space at the top for binding and tumble printing reverse sides of forms are especially important. Forms are to be printed in black ink on 8-1/2 x 11 inch pastel or white paper, color banded according to case type, in order to permit good quality duplication. Present microfilm technology produces varying degrees of gray or black copy from dark shades of paper (like blue and red) and will not reproduce colored ink. All old forms should be discarded when new forms are printed.

Other general instructions are:

1. Plaintiff information is on the left side of forms and defendant information is on the right side except for high volume forms normally mailed such as the Notice to Appear and the Civil Judgment forms.
2. High volume forms which are usually mailed are designed so addresses will appear in standard #10 window envelopes when folded on lines marked in the left margin of forms.
3. Unless specifically required by statute or code or court rule, a signed and dated declaration is used instead of a sworn jurat.

SUBJECT
DISTRICT COURT SAMPLE FORMS

SECTION 3000 **DATE** 7-1-79

PREPARED BY
SCAO INFORMATION SERVICES

CHAPTER 8 **PAGE** 3145

ORIGINAL - COURT TWO COPY - RETURN
1ST COPY - DEFENDANT 2ND COPY - PLAINTIFF

STATE OF MICHIGAN ____ DISTRICT COURT	SUMMONS AND COMPLAINT	CASE NO.
--	--------------------------------------	----------

Court address

Court telephone no.

Plaintiff name(s) and address(es)	
Plaintiff's attorney	Bar no.
Address and telephone no.	

Defendant name
Address
Defendant name
Address
Defendant name
Address

NOTICE

In the Name of the People of the State of Michigan, to the above named Defendant(s): **YOU ARE BEING SUED:**

- A. You are notified that you have 15 days after receiving this summons to file with this court a written answer to the Plaintiff's complaint or to take such other action as may be permitted by law.
B. Failure to answer, or take other action permitted by law, may cause judgment to be entered against you for the relief demanded in the Plaintiff's complaint.

Date issued by court	Expiration date of summons	Process Server	Clerk
			By: Deputy

(SEAL)

COMPLAINT

Attach additional sheets if necessary.

I declare under penalty of contempt of court that to the best of my knowledge, information and belief there is good ground to support the contents of this pleading.

Signature of Plaintiff/Attorney

FOR VERIFIED COMPLAINTS ONLY

Subscribed and sworn to before me on _____ Date _____ County _____ Michigan.

My commission expires: _____ Date _____ Signature: _____ Deputy Clerk/Notary Public

SUMMONS AND COMPLAINT, Form No. DC201 (4 part, yellow) Revised 6/79

4. A standard return of service provides for a signed certification by a court officer or a sworn affidavit by a peace officer/or process server, plus listing of multiple defendants, description of unsuccessful attempts to serve process and an acknowledgment of service.

Before a new form is designed every effort should be made to understand its preparation, use, and distribution. The following DOCUMENT ANALYSIS worksheet will facilitate the determination of these items and other information needed for each form. Once a form has been developed (or revised) it should be listed on a FORMS INDEX like the following sample from Michigan.

DOCUMENT ANALYSIS

DOCUMENT
NUMBER

NAME/TITLE

CITATION

--	--	--

USERS STATEMENT OF PURPOSE: (or justification)

--

DOCUMENTS CHARACTERISTICS

Usage/Frequency _____	Annual No. _____
<input type="checkbox"/> Handwritten <input type="checkbox"/> Typed <input type="checkbox"/> W.P. <input type="checkbox"/> Computer <input type="checkbox"/> Other	
No. of Copies _____	Carbon Interleaf _____ NCR _____
Staff time required to prepare _____	

PREPARATION

Step	Procedures Required of Court Staff
1	
2	
3	
4	
5	
6	
7	

CONTENTS

Item	Description of Data	Item	Description of Data

ROUTING

Copy	Recipient		Use/Action Taken
	Person	Office	
1			
2			
3			
4			

SUBJECT	DISTRICT COURT APPROVED FORMS INDEX	SECTION	3000	DATE	1-31-80
PREPARED BY	SCAO	CHAPTER	8	PAGE	3141

APPROVED DISTRICT COURT FORMS INDEX - JANUARY, 1980

<u>Form No.</u>	<u>Rev. Date</u>	<u>Title</u>	<u>Color Band & No. of Parts</u>	<u>Discontinued Form No.</u>
DCZ01	6/79	Summons & Complaint with Return of Service	Y 4-part	DC1, DC52
DCZ01A	6/79	Summons & Complaint, Account Stated	Y 4-part	DC51
DCY02	8/79	Attorney's Appearance & Notice	W 3-part	DC2
DCY06	6/79	Notice to Appear	W 3-part	DC6, DC208
DCZ07	1/79	Default	Y 3-part	DC7, DC70
DC8		Stipulation to Adjourn	Y 3-part	
DCZ09	3/79	Dismissal, Voluntary	Y 3-part	DC9, DC16
DCZ09A	3/79	Dismissal, Nonservice/No Progress	Y 3-part	
DCZ10	1/79	Judgment, Civil	Y 3-part	DC10
DCY11	6/79	Order to Appear, Subpoena with Return of Service	W 3-part	DC11, DC71, DC207
DCG12	1/80	Affidavit & Writ of Garnishment after Judgment	Y 5-part	DC12
DPG13	3/79	Garnishee Disclosure	Y Pad	DC15
DCG14	1/80	Garnishment Order To Pay/Release	Y 2-part	DC14
DCG15	1/80	Petition for Payment Order - Stay of Garnishment	Y 3-part	DC4
DCG16	1/80	Petition to Set Aside Payment Order	Y 3-part	DC5
DCZ17	1/80	Satisfaction of Judgment	Y Pad	DC17, DC28
DCZ19	1/80	Execution	Y Pad	DC24, DC25, DC27A,B,C,D, DC28



Old docket books

Effective forms design programs save courts time and money

Courts have experienced substantial savings in both personnel time and money through an effective forms design program. The State of Alabama, for example, reduced form costs for courts statewide from \$3 million to \$800,000 annually through the development of a comprehensive statewide forms design program. Courts elsewhere could experience comparable savings resulting from the consolidation and elimination of forms (designing one form to replace several others), improved forms design, and bulk purchasing.

The following techniques are recommended in order to ensure an economical and effective court forms design program:

- ☐ Case number should appear in one unique location (generally upper corner) on all forms.

- ☐ Form numbers, date of issue, and issuing agency should appear on all forms in the same location.
- ☐ Form titles should appear on top of all forms and uniquely define the form's purpose.
- ☐ Forms should be written in plain English; Latin, foreign terms, and legal terminology should not be used.
- ☐ Forms should be printed on letter-size paper; legal-size paper should not be used.
- ☐ Information on the forms should flow in a logical sequence.
- ☐ Forms should be simple to understand; if necessary, instructions regarding how to fill out the form should be printed on the back of the form.
- ☐ Space should be provided to insert variable (fill-in) information using the box design; space allocated should conform to the amount of information required to be inserted.
- ☐ Titles describing the variable (fill-in) information should be printed in small letters in the upper left-hand corner of each box.
- ☐ Variable (fill-in) information should generally be aligned to the left-hand margin to facilitate typing; other variable (fill-in) information should be located at a few predetermined (3 or 4) tab stops; small vertical bars should be printed along the top of the form to indicate the location of tab stops.
- ☐ Line spacing on the form should be designed to correspond to typewriter spacing.
- ☐ Distribution information for multipart forms should be printed clearly on each part of the form.
- ☐ Forms should be consolidated whenever possible.

Multipart forms replace docket

Courts in Colorado and Alabama and a few other states have developed alternative manual systems for smaller courts to replace the hard bound books, commonly called a Docket or Register of Actions, for listing case-related actions. These courts now use a multipart form system similar to the one shown below. The system consists of a Register of Actions sheet and two or more index cards forming the multipart form. When the basic case information such as case number, style, and attorney names are typed on the top of the form, the index cards are also produced at the same time through the use of carbon interleaves or carbonless paper. The Register of Actions sheet can then be maintained in a tub file or loose

Continued on next page

Case Number: 100-100000-100000
 Date: 10/10/78
 Case Title: 100-100000-100000
 Case Description: 100-100000-100000
 Case Action: 100-100000-100000
 Date: 10/10/78
 Date: 10/10/78

**Alabama civil case action
summary multipart form**

Letter size paper becoming legal norm

Traditionally, court case file records have been prepared on legal size paper. Advocates of legal size paper claim that the extra paper length enables form information to fit on one side of a page and shortens the total number of pages of briefs and other long documents.

In contrast to the courts, the rest of the business community generally uses letter size paper (8½" × 11") for most communications. Letter size paper has become a standard for business and the general community (except for the federal government) because it is sufficiently large to meet user needs. It is also relatively inexpensive compared with other paper sizes because the paper industry can cut this size inexpensively due to the huge demand.

Besides the courts, the federal government has been the only significant group that has not adopted letter size paper as the standard. Since the 1920's, the federal government has used 8" × 10½" for government work. In December 1978, after much heated debate and research, the federal government finally decided to conform to the industry letter

size standard effective January 1, 1980. The switch to the letter size, according to some experts, will save the federal government between \$10 million and \$15 million a year in paper costs alone.

Should the courts also conform to the letter size paper standard? The facts are compelling. First, legal size paper, filing equipment, and supplies cost 20% to 30% more than letter size. Second, legal size filing equipment occupies 30% more floor space than comparable letter size equipment. This is particularly relevant for courts with limited filing and storage space. Often substantial space is wasted in a legal size filing system because 50% to 70% of the documents filed are actually letter size; yet, legal size filing equipment and supplies must still be provided. Third, most forms, orders, and letters can be conveniently prepared on letter size paper, provided proper forms design techniques are incorporated. (See Forms Design Checklist.)

As a result of the compelling cost and space benefits provided by letter size paper, some states have now mandated that all court case file records be on letter size paper. The following states have already adopted the letter size paper standard: Alaska, California, Connecticut, Kentucky, Massachusetts, New Jersey, Oregon, and Washington. (See California Rule 201. "Form of Papers Presented for Filing" below.) Several other states and individual courts have either adopted the letter size paper standard informally or are considering adopting the letter size standard. The transition to letter size paper normally is accomplished over several years to enable

courts and attorneys to exhaust their supply of legal size paper and forms, and to enable the courts to acquire the appropriate equipment and supplies to efficiently handle letter size paper.

Some courts wishing to convert to letter size paper have experienced resistance from groups clinging to traditional attitudes: "Letter size paper is just not legal!" Like any new system, the letter size paper standard must be sold to users by showing the substantial benefits of the new approach.

California Court Rule 201(b)

Rule 201(b) of the California Rules of Court is excerpted below as a good example of a court rule controlling the form of documents presented for filing.

Rule 201(b) Size of paper, pagination, etc. All papers shall be typewritten or printed, or prepared by a photocopying process or other duplication process that will produce clear and permanent copies equally legible to printing, in type not smaller than pica size, on opaque, unglazed white paper of standard quality not less than 13 pound weight, 8-½" x 11" in size . . . Only one side of the paper shall be used, and the lines of each page shall be one and one-half spaced or double spaced and numbered consecutively; provided, however, descriptions of real property may be single spaced and printed forms of corporate surety bonds and undertakings may be single spaced and have unnumbered lines if they comply generally with the space requirements of subdivision (c). Paper shall be numbered consecutively at the bottom. All pages shall consist entirely of original pages without riders, and shall be firmly bound together at the top. Exhibits may be fastened to pages of the specified size and, when prepared by a machine copying process, shall be equal to typewritten material in legibility and permanence of image. (As amended effective January 1, 1976 . . .)

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MULTIPART FORMS

Continued from previous page

leaf to facilitate easy access while the case is open. The index cards are maintained in true alphabetical order in card filing equipment or as input to a computer data entry system.

The multipart Register of Action form was developed in response to severe problems caused by maintaining records in bound books. Bound books were once appropriate to ensure record integrity when case volumes were low. Docket books are now extremely expensive (costing up to \$600 per book) and must be stored on expensive roller shelving (costing \$800 to \$1,200). Books are extremely heavy and difficult to handle and all too often live up to the name "hernia books" given to them by the CITAT Project staff. The books are difficult to microfilm,

requiring the binding to be cut and a special planetary camera to accommodate the oversized pages (often as large as 18" × 22").

The Register of Actions-sheet is much easier than books for the staff to handle and use. This sheet can also be rapidly microfilmed. In addition, substantial staff time is saved by simultaneously producing the index cards when the Register of Actions heading is typed, without additional staff effort. Courts using this system have been very pleased with the results.

(The Colorado multipart Register of Action system is described in the National Center publication *Manual Case Processing: A Model System*, E007. \$3.25.)

RECOMMENDATION 3

COURT CLERKS SHOULD USE CASE SUMMARY SHEETS RATHER THAN DAILY NOTES.

The court clerk currently keeps a daily log of notes on each case heard by the court. These notes are then typed up and placed in the file for the particular case.

It is the Center's recommendation that the clerk stop taking handwritten notes on each case and instead fill out a standard form for each case and attach it to the case file. The form would contain a complete history of the case, being updated each time there was any action on the case. This would allow easy access to information on the case without searching back through the whole file. Care should be taken that the form is printed on good quality paper to ensure record preservation. The case sheet format was explained and discussed with court clerks. They were in favor of changing current practices to the use of the case sheet.

RECOMMENDATION 6

THE COURT SHOULD STOP USING BOUND DOCKET BOOKS AND USE THE PROPOSED CASE SHEET FOR CIVIL AND CRIMINAL CASES.

The court is currently keeping bound docket books for all criminal cases. Information is recorded from the file into the docket books. This is an unnecessary duplication of effort. Presently no docket books are kept for civil cases. Court staff expressed the belief that they were required by code to keep docket books. Code § 1-2-12(2) requires the court clerk "keep all records, files, dockets or other records required to be kept." There is no requirement that dockets be kept in books.

It is the Center's recommendation that the Menominee court discontinue the maintenance of bound docket books and implement a standard form case summary sheet. Implementation and use of the case summary sheet would require less clerical time and would be much less expensive than buying the bound docket books. The case summary would also require less storage space and be much less awkward for clerks to handle. The case summary sheet concept was explained and discussed with court personnel.

The case summary sheet would be attached to the inside front of each file. Care should be taken that forms are printed on good quality paper to prevent destruction by age.

The form should be designed in consultation with clerical staff to ensure that the form contains all necessary information and that events are in the proper sequence. The form should contain space for post judgment activities as well. A standard agreed upon format will assure acceptance and usage by all court personnel. All staff including judges should be trained to fill out the case summary sheet in the same way to ensure uniformity of records. The same form should be used for civil, criminal and probate cases.

MENOMINEE TRIBAL COURT

COURT RECORDS

CASE # _____

Judge: _____

DATE: _____

TIME _____

PLAINTIFF(S) MENOMINEE INDIAN TRIBE

DEFENDANT(S) _____

CHARGE(S) _____

PLEA _____

TRIAL BY: Court _____ or Jury _____

APPEARANCES: _____

PRE TRIAL DATE OR MOTION HEARINGS: _____

TRIAL DATE: _____

DEFENSE COUNSEL _____

COURT ORDER OR DISPOSITION _____

FINE: _____ COURT COSTS: _____

DUE DATE: _____

CASH BOND _____ or SIGNATURE BOND _____

REMARKS:

INITIAL APPEARANCE: _____

CONTINUED INITIAL APPEARANCE: _____

Tribal Prosecutor

RECOMMENDATION 4

THE COURT SHOULD REMOVE FROM A COURT FILE ALL UNNECESSARY OR
DUPLICATIVE DOCUMENTS AS PART OF A DAILY ROUTINE.

Court staff do not remove or destroy any documents placed in a file. Such documents include envelopes, cover letters, and copies of pleadings placed in the file even after the original has been returned to the court. These items are either unnecessary or duplicative and need not be retained by the court. This practice increases the size of a file and the storage requirements of the court.

Envelopes and cover letters should not be placed in a court files. Copies of pleading (e.g., summons, writs of garnishments and warrants) should be discarded when the original is "returned" to the court. A more detailed review of papers kept in court file may reveal other documents that can be discarded by court staff.

Removal of Unnecessary Documents from Court Files

Under the present system, the court maintains a single file for each defendant. All cases for that defendant are kept in that defendant's folder. The clerk maintains 100 defendant folders in each of 12 file drawers. If the court were to remove from the files (open and closed cases) the following items, it is estimated the court would be able to reduce the volume in saving of these tightly packed drawers by one third. This would reduce the need for "back shifting" and storing less than 100 individuals folders per drawer, which is one alternative to purging unneeded documents.

Items to be Removed from Defendant Files

Closed Cases

- Envelopes
- Transmittal Letters
- Duplicate Documents
- Notes on Scrap Paper
- Copies of Receipts
- Anything with no Legal Value

Open Cases

- Envelopes
- Transmittal Letters
- Duplicate Documents

Certain items should be kept by the court until the full case record can be destroyed. These items include:

- Complaint
- Answer
- Cap Sheet (Record of Court)
- Paternity Affidavits
- Warrants (Original with return of Service)
- Original Court Documents
- Original notes in Civil Cases

If the court agrees that the above noted items can be removed from open or closed cases, then an Order should be prepared authorizing and instructing the clerk to purge these items from individual files.

Date Stamping Court Documents

The court still does not note when a pleading or document is filed with the court. These items should be dated when received by the court. It is the Center's recommendation that the court purchase a hand stamp for this purpose. A standard date stamp can be purchased from any office supply store for around \$10.00

RECOMMENDATION 5

THE COURT NEEDS A RECORD RETENTION SCHEDULE TO DETERMINE WHEN IT MAY PURGE RECORDS IN ORDER TO ELIMINATE RECORD STORAGE PROBLEMS.

The court currently is using no record retention schedule; nothing is being purged from court files. The court is new enough that as yet this has not created a records storage problem. Clerks estimated that storage would begin to be a problem in six months. This is a good time to implement a uniform retention schedule since the clerks can deal with it before it becomes a problem. Files can be stored in such a way to facilitate proper record retention practices. (See Appendix D: NCSC Report on Record Retention and Disposition.) The Chief Justice expressed an interest in having a record retention schedule which conformed to state court practices.

It is the Center's recommendation that a record retention schedule be developed for the Menominee court, patterned after the Wisconsin state court record retention schedule. The Wisconsin state schedule could be adapted to include any additional records of Indian courts and to take into consideration any records requirements of the BIA. (See Appendix E: Wisconsin Record Retention Schedule.) In addition, the retention schedule will identify those items that can be thrown away on an on-going basis such as copies, cover letters or envelopes.

National Center for State Courts REPORT

Court Improvement Through Applied Technology (CITAT)

INACTIVE RECORDS: RETENTION AND DISPOSITION

August 1979



De facto destruction

Inactive records present problems for courts

Courts throughout the country are experiencing difficulty with the management and maintenance of inactive records. Court space is expensive and often limited—especially easily accessible office space. With the increases in new cases and documents, retrieval time increases, and misfiling becomes more frequent. In order to free court space and alleviate filing congestion, closed or inactive case files should be removed from the main filing area and filed separately. Most courts, however, do not have adequate storage space or expertise in long-term records maintenance. As a result, many valuable court records may be damaged or destroyed through improper storage.

Courts records storage areas often have the following characteristics:

- Records are stored without any systematic control as to storage location or record content.
- Records are often maintained in a disorderly manner, with records lying loose on the floor or spilling off shelves.
- Records are stored under water pipes or in basements subject to flooding.
- Rats and other pests are often found in the records area.
- Unauthorized persons are given access to the records room, and valuable records are sometimes damaged or stolen.
- Records are deteriorating because of the passage of time, improper usage, or climate.

If these problems describe your inactive records storage, the development of a records retention or efficient inactive records storage program is needed immediately.

Unlike wine and cheese, court records do not improve with age. A comprehensive records-retention and -disposition schedule facilitates the preservation of valuable records and the destruction of valueless records.

The development of an effective retention and disposition schedule begins with a complete list of all record types currently being maintained by the court. The legal, administrative, fiscal, or historical value of each record must then be determined. A retention period is then assigned, according to this value. This generally reflects the period during which the record may be required for a court proceeding or to verify an individual right. During the retention period, the record must be retained in some form (either on paper or microfilm), either in the court facilities or in some remote location.

At the conclusion of the retention period, the records should be destroyed or eliminated from the jurisdiction of the court according to the predetermined schedule. It is vital that destruction be not only allowed, but *required* if the records-management program is to be successful. The major reasons for developing a strong retention and destruction schedule are cost, space, and time savings, and these savings can only be realized if valueless records are regularly purged.

It is recommended that the records-retention and -destruction schedule be implemented and enforced through the use of court rule. It is important that court rule rather than statutes be developed, for statutes are far more difficult and time consuming to enact and revise. The Supreme Court, by exercising its statewide authority in this area, will be able to develop the records-management program faster and more uniformly, while

Retention and disposition schedule aids effective records management



*Warehouse open steel shelving
and record center boxes*

still allowing for future changes if necessary.

Once a records-retention and -disposition schedule has been established, inactive records can be effectively managed. Generally, records will be handled in one of the following three ways:

(1) **Destroy Valueless Records:** Destruction of records is the recommended way to eliminate records whose retention has expired. The cost is minimal, and the benefit in space savings and improved operation could be substantial. Some records may even be sold for recycling with the revenue used to help finance the records-management program.

(2) **Store Inactive Records in Low-Cost Storage Facility:** Records that are no longer needed for daily court operation but cannot be destroyed may be relegated to a remote, less accessible, low-cost records storage area.

(3) **Destroy Inactive Records After Microfilming:** Inactive records should be microfilmed only if the retention period is more than 10 years and if the paper records will be destroyed after the microfilm has been verified.

Guidelines given for inactive records storage

Warehouse Open Steel Shelving

- ☐ **Height:** Warehouse steel shelving should extend as high as the facilities permit or to a maximum height of 12 to 14 boxes. A clearance of 18 to 24 inches from the ceiling is generally required for lighting fixtures and water sprinklers.
- ☐ **Width:** Shelving units should be as wide as possible, because wider shelves provide the best cost-to-filing inches ratio and require fewer units to fill a given size records room. Generally a 42- to 48-inch shelf is recommended. Sufficient space (two to three inches per shelf) should be provided to insert and remove storage boxes.
- ☐ **Depth:** Warehouse shelving should be sufficiently deep to accommodate two boxes back-to-back on the shelf. Most storage boxes will be adequately supported two deep by a 30-inch shelf.
- ☐ **Number of Shelves:** Two storage boxes may be stacked on top of each other on each shelf, generally requiring a 23-inch separation between individual shelves. Boxes may also be placed on individual shelves (11 inches apart) without stacking to facilitate retrieval; this approach, however, is more costly in terms of equipment, since more shelves are required.
- ☐ **Side and End Panels:** No side or end panels should be used with warehouse

steel shelving.

- ☐ **Support Design:** "T"-shaped upright supports are preferred, since one support can be used to connect two units of shelving. These supports are recommended when the shelving unit will remain stationary. If the units will be moved, "L"-shaped supports that attach to all four corners of the shelving will be required.
- ☐ **Assembly:** Units should be acquired that require minimal assembly but provide the requisite strength and support.
- ☐ **Aisles:** Warehouse shelving requires only a 30-inch aisle between the units. Shelving rows should not extend more than 30 feet without an access aisle to facilitate movement within the files.
- ☐ **Accessories:** A mobile steel ladder will facilitate access to the higher levels of the filing tier, and movable carts are recommended to aid in the transfer and retrieval of the storage boxes.

Storage Boxes

- ☐ **Size:** A standard-size storage box measures 15" x 12" x 10". These boxes are designed to hold legal-size folders in one direction and letter-size folders in the other.
- ☐ **Material:** Boxes should be made from heavy-duty corrugated cardboard.
- ☐ **Strength:** The double wall 175#

strength is preferred, although a single wall 200# strength is acceptable.

- ☐ **Opening:** Top-opening storage boxes provide dense record storage at the lowest cost. When boxes are stacked on top of each other, it will be necessary to remove the top box in order to gain access to the lower one. Since these boxes will weigh 30 to 50 pounds when full, moving them can be difficult. Front-opening storage boxes are designed to store side-tab file folders. Even when boxes are stacked on top of each other, records can still be accessed without the need to remove or relocate any box. Front-opening storage boxes, however, cost five to ten times more than the equivalent standard top-opening storage box and provide less protection for the records.
- ☐ **Acid Content:** For long-term records storage (100 years or more) acid-free boxes are recommended.
- ☐ **Hand hold:** Hand holds should be provided on two sides of the box. The cut-outs for the hand holds should swing down to enclose and protect the records when not in use.
- ☐ **Assembly:** Boxes should be easy to assemble, with instructions clearly marked on the box.
- ☐ **Construction:** No staples should be used on the boxes as they may injure users and rust with time. Seams should be glued with non-water-soluble glue.

Proper storage protects records from damage by fire and water

When adequate space is available within or near the court, the court-operated records center will generally prove to be the least expensive and most convenient means to store inactive court records. All records will remain under court control and can easily and inexpensively be retrieved.

Protection from fire is a primary concern when storing paper documents. Tests have shown that records packed tightly in corrugated cardboard storage boxes will not burn easily. A water sprinkler system should be installed equipped with sprinkler heads that will discharge independently to extinguish a localized fire without discharging the whole sprinkler system. A smoke detector should be installed in conjunction with the water sprinkler to give early warning of fire to enable the staff to extinguish the flames with fire extinguishers; the smoke detectors can be hooked directly to the fire department or to an alarm in the clerk's office. Fires can therefore be extinguished early, before the heat discharges the water sprinkler and possibly damages the records. Fire extinguishers

should be readily available and all staff trained in their use. A Halon gas system, which will automatically extinguish fires with minimal damage to the records, should also be considered by courts. Of course, the best way to combat fires is to prevent them. Smoking prohibitions should be enforced in the records area and in the surrounding areas.

Court records could also be damaged from water pipes or flooding. The storage facilities should never be located in a room that has water pipes overhead. In addition, the lowest shelf on the filing unit should be elevated at least four inches to allow for potential flooding.

Inactive records are best maintained at a temperature below 70° F and a low humidity (50-60 percent). Records should not be stored near a heat source, such as a furnace or hot-air vent.

Inactive records rooms should have lighting, preferably fluorescent, located over aisles. This is especially important for inactive records, since high filing equipment is used, which might obstruct the light.

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MENOMINEE TRIBAL COURT RECORDS RETENTION SCHEDULES

The proper management of court records includes the development and application of records retention schedules and disposition policies on all identifiable records series.

In conceptualizing retention schedules, there are basically two categories of information contained in court records:

1. Information of long term or permanent value, and
2. Information of temporary or non-permanent value.

In deciding that court record information fits into the first category of "permanent" value, the question must be asked, "value to whom?" This question inevitably leads to a discussion of records appraisal. No one person or special interest can realistically appraise records for their administrative legal, fiscal and historic value. So ideally, a cooperative interdisciplinary approach should be used.

The functions involved in the appraisal include the records custodians or administrators and the state's archival agency. Other interests involved in the process are the agency involved with fiscal integrity (auditors) and the attorney general or tribal attorney who may have comment on the legal value of some records series.

The key actors in the process are inevitably the court administrators and the state archival agency. These two agencies have both compatible and competing interest concerning the retention and disposition of court records. The National

Center for State Courts feels strongly that the judiciary must take the lead in developing and promulgating records retention and disposition policies since the courts are the records custodians and have greater insight into the administrative and legal value of court records than any other agency.

The disposition of court records is perhaps the most commonly neglected and misunderstood area in records management, a condition which leads to a number of problems in the long-term maintenance of records. Records considered to be invaluable are commonly stored in basements, attics, and off-site storage locations where they lack security measures, collect dust and vermin, and lose their filing sequence because of careless use. Commonly, little or no protection exists against fires and flooding which destroy the records or render them useless as reference documents.

A less common problem of records disposition is the placement of records in storage areas before they are completely inactive....

Finally, many courts, for reasons of self-protection and records security, keep the original paper records even though they have been microfilmed. It is common to find both microfilm copies and the original hard-copy as archival records.

The solution to the above problems lies in the development of a continuing plan for records disposition. The records inventory form, when completed for all records series, is the starting point for a continuing records disposition program. From the inventory information, the court can appraise records series as to their retention value.

1. RECORDS APPRAISAL. The first step in disposition program development is records appraisal. During the compilation of the inventory, or upon its completion, the decision should be made as to how long each series should be kept in courthouse office space before being retired. Therefore, it is necessary to determine the immediate and future usefulness of the records not only to the court, but also to the state government and to the public. In general, records should be retained in office areas as long

as they are needed for the administrative, legal, and fiscal purposes for which they were created. When they are no longer needed during their active stage, they should either be transferred to a records storage center or area, microfilmed, destroyed, or if of archival value, deposited in the state or historical archives.

During their semi-active or inactive stages, the record should be given the same care and attention as during their active stage. As a general rule, records are considered to be inactive when reference to them is less than one time per file drawer per month.

Four key elements are taken into account in appraising each records series:

Administrative Value. Records have administrative value as long as they assist the court in performing current or future work. Administrative use of most records is exhausted after the transactions to which they relate are completed. Some administrative records, however, contain basic facts concerning the court's origin, policies, functions, organization, and significant administrative decisions; these should be retained permanently to provide documentation of the court operations.

Legal Value. Records have legal value if they contain evidence of legally enforceable rights or obligations of the state or individuals. Examples are 1) legal decisions and opinions, 2) fiscal documents representing agreements such as leases, titles, and contracts, and 3) records of action such as claims and dockets, and 4) the Official Records maintained by the clerk as recorder.

Fiscal Value. Records which relate to financial transactions, after having served their administrative needs, may be retained....to document the receipt and expenditure of moneys for audit purposes.

Archival Value. A small portion of the records have enduring value because they contain information about significant events or because they document the history and development of the court and the (tribe). Such records may also contain precedents for policies and procedures and are valuable to the state, students of public administration, researchers in many fields, genealogists, and historians.

2. SCHEDULE SUBMISSION AND APPROVAL. After records have been inventoried and appraised, and after proposed retention periods have been specified, a request for records retention schedule approval is prepared for submission to the appropriate authority....Commonly, the Court Clerk or Presiding Judge first submits recommendations to the Auditor General, the Attorney General, and possibly to an historical society before submission to the approving authority. Upon approval, the schedule is applicable and enforceable. This process may be conducted for individual trial courts or for all trial courts in the state.

3. SELECTING AND MOVING RECORDS TO STORAGE. As mentioned above, records are considered active or inactive depending on the frequency of reference. If the contents of a file drawer are referred to not more than once a month, the records are considered inactive and their low usage rate does not justify continued maintenance in office space. After becoming inactive, records should be destroyed or sent to long-term storage as soon as possible. If the records can be destroyed within two years, it is not cost effective to transfer them to long-term storage since the major cost is incurred in the transfer process.

One technique of sorting files into groups for convenience in handling is referred to normally as "breaking" files. Record disposition, whether by transfer or destruction, is aided by regular, periodic breaking of files and by the physical separation of active from inactive files. For example, using the year in the case file number (i.e. 78-0001), permits transfer to storage or destruction of case files in chronological block groups.

Trial Court Management Series, Record Management, Ernest H. Short and Charles Doolittle, July 1979. U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice

The following recommended tribal court records retention schedules should be considered a starting point for evaluating tribal court retention policies. The full appraisal of various records series and final schedules should result from discussions and deliberations with the state archival agency, the attorney general, tribal attorney and auditors.

The tribal judiciary should encourage agreement on the overall goals of the judiciary records retention and disposition program, to include, but not be limited to the following elements:

1. Establish a system for managing court records required by statute or code in an efficient and cost-effective manner.
2. Identify and dispose of obsolete and useless records as soon as practical after they have served their administrative, legal or fiscal purpose.
3. Identify and isolate court records and information which may have long term or historic value and preserve such information so it is accessible to potential users and protected from deterioration or destruction.

Explanation of Retention Instructions

The following is a definition of terms used in the retention schedule.

1. Permanent. the records series must always be retained in the courthouse or other designated storage facility. After the item has been microfilmed and the film approved, the paper copy can be destroyed.¹

¹ Since the papers and inks used to create records are not of "permanent" quality, new technology for information storage should be considered for preservation of "permanent" court records. Caution should be used in establishing a microfilm program because of the expense and technical complications. Further guidance should be sought prior to the establishment of a microfilm program.

2. Destroy after audit. The item shall be retained until an audit report is issued.
3. Maintain in office () years from date of filing.
The item can be disposed of after the designated number of years.
4. Maintain at discretion of clerk. The item can be retained by the official having custody of the record as long as that official feels it is useful. (This category is not used in the following recommended retention schedule, but may be useful for as yet unidentified records series.)

Designation of Case Papers That Do Not Have Long Term Retention Value.

Certain case papers have value only as long as the case is active. They do not have long term retention value. These papers include:

1. Correspondence not pertaining to the substance of the case, e.g., transmittal letters, letters dealing with scheduling and affidavits of mailing;
2. Receipts;
3. Briefs, memorandum of law, memorandum of briefs;
4. Copies of documents for which the court is not the primary office of record, e.g., police reports, probation reports;
5. Duplicate copies of proceedings;
6. Copies of documents attached to an affidavit of service, or the temporary copy held until the service copy is returned to the court;

7. Judge's bench notes;
8. Typed or handwritten notes of court personnel and envelopes;
9. Interrogatories.

These papers are date-stamped upon receipt and may also be stamped "Received" if the clerk or register wishes to do so. At case disposition or sooner, these papers are discarded from the file folder.

Methods of Records Destruction.

When records are approved for destruction, the clerk of court should destroy the records promptly and effectively. The primary purpose of such destruction shall be to reduce the records to an illegible condition. Burning, pulping, shredding or using for land fill are the most effective methods for accomplishing that purpose.

Pursuant to appropriate authorization, the court may destroy records by re-selling them for recycling purposes, under the following conditions:

1. The prompt destruction of the record shall be ensured and responsibility for such destruction shall continue to be that of the agency until effectuated.
2. Records shall not be kept in unattended or unprotected storage awaiting their destruction.
3. The person or entity to whom the records are sold provides evidence of the destruction of such records in the form of a destruction certificate. A certificate of destruction should be prepared indicating the records destroyed. Confidential records should be destroyed only by court personnel.

RECOMMENDED RECORD RETENTION SCHEDULE
MENOMINEE TRIBAL COURT

<u>TYPE OF RECORD</u>	<u>RETENTION PERIOD</u>	<u>COMMENT</u>
1. <u>Case Files</u>		
1.1 Civil	10 years (any cases affecting property rights should be kept permanently.)	After purging of unneeded material
1.2 Small Claims	10 years	After final order, excluding time on appeal or 10 years after case becomes dormant.
1.3 Family, divorce, paternity, civil commitment, adoption probate and guardianship	Permanent	After purging unneeded documents
1.4 Criminal	10 years	Assumes no felony cases
1.6 Criminal traffic, non-criminal traffic, non-traffic ordinance violations, conservation violations	6 years	
1.7 Juvenile: Delinquency, CHIPS, truancy	When the individual reaches age 25	
2. <u>Court Record Docket (case summary)</u>	Permanent	Not created for all case types
3. <u>Indexes</u>	Same as docket/ court records	If docket not kept, destroy index with case file.
4. <u>Liens; Claims for Liens</u>	10 years after filing	

<u>TYPE OF RECORD</u>	<u>RETENTION PERIOD</u>	<u>COMMENT</u>
5. <u>Warrants, Delinquent income tax, Unemployment compensation and others</u>	10 years after filing	
6. <u>Minute Records</u>	Same as case file	
7. <u>Exhibits</u>		
7.1 Civil and all family case types (divorce, adoption, paternity) and Probate	Return to parties 30 days after appeal period or destroy if not claimed by parties	
7.2 Criminal:		
a. When defendant is <u>not</u> incarcerated	<ul style="list-style-type: none"> o Return 30 days after appeal period. o Destroy if not returnable. o Destroy if re- turnable but not claimed in time period. 	Weapons, drugs, and contraband should be returned to the law enforcement agency for destruction.
b. When defendant <u>is</u> incarcerated	<ul style="list-style-type: none"> o Retain for period of incarceration and then return or destroy as appropriate. 	
8. <u>Search Warrants</u>	5 years	
9. <u>Audio Tapes of Court Proceedings</u>	1 year	Erase and reuse tapes.
10. <u>Financial Records</u>		
10.1 Receipt journals	Destroy after audit	
10.2 Special Account Ledger Cards	Destroy after audit	If account is closed

<u>TYPE OF RECORD</u>	<u>RETENTION PERIOD</u>	<u>COMMENT</u>
10.3 Check Requests (for disbursement)	Destroy after audit	
10.4 Deposit/Transmittal Reports	Destroy after audit	
11. <u>Wills deposited for safekeeping</u>	75 years after filing	
12. <u>Index of wills</u>	75 years after will filed	
13. <u>Juror records</u>		
13.1 Juror questionnaire	2 years after panel has completed service	
13.2 Jury lists	2 years after panel has completed service	
14. <u>Court calendars</u>	6 months	

CHAPTER 9: Case Initiation and Processing

- A) Civil and Small Claims
- B) Family
- C) Paternity
- D) Criminal
- E) Traffic and Non-Traffic Ordinances
- F) Estates
- G) Guardianships
- H) Adoptions
- I) Civil Commitments

RECOMMENDATION 5

THE COURT SHOULD CONVERT ITS PRESENT FILING SYSTEM FOR CIVIL AND CRIMINAL CASES TO A SINGLE FOLDER FOR CRIMINAL DEFENDANTS AND PLAINTIFFS IN CIVIL CASES.

The court presently assigns sequential case numbers to both civil and criminal cases filed with the court. Each case is then placed in a separate case folder.³ A numerical index is kept for all assigned case numbers. However, court folders are stored in alpha order. Civil cases are arranged by plaintiff's name while criminal cases are filed by the defendant's name.

The need for court folders and storage space could be reduced significantly if all cases relating to an individual defendant (criminal cases) or plaintiff (civil cases) were stored in a single court folder arranged alphabetically in the filing cabinets. Civil and criminal cases should continue to be stored in separate filing cabinets.

This proposed filing system will also assist the probation department's preparation of presented reports since all prior criminal convictions are in a single folder by defendants name. To convert the existing system to the proposed system, the court need only consolidate a party's separate folders into a single folder. The old folders should be kept and reused. Implementation of this recommendation will make it unnecessary to purchase additional filing cabinets as anticipated by the court because of predicted storage problems in six (6) months.

³ Except in civil cases where both parties were litigants in a previous case. In this situation the court places the documents from the second case in the first case's court file.

CIVIL AND SMALL CLAIMS

PROCEDURE

1. Case Initiation

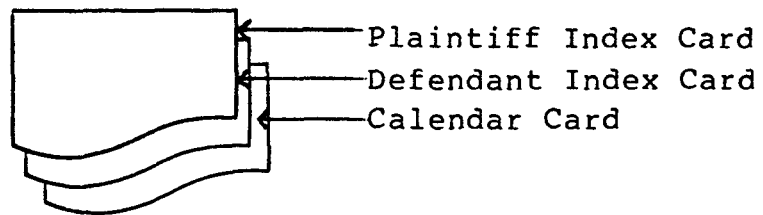
Civil and Small Claims cases are commenced by the filing of a summons and complaint and possibly other legal documents. The filing of initiating documents may be done in person or by mail. Case processing and record-keeping procedures are similar in these three case types.

- 1.1 Receive filing fee and issue receipt.
- 1.2 Receive summons and complaint.
- 1.3 Assign judge in accordance with local procedure.
- 1.4 Assign a case number by selecting the next available prenumbered case folder.
- 1.5 Authenticate the original and copies of summons and complaint by stamping on the first page of the original and copies.
- 1.6 Return the copies of the summons and complaint for service in accordance with local procedures.
- 1.7 File stamp the first page of the original summons and complaint.
- 1.8 Enter basic case information on the top portion of the court record form and enter the filing of the summons and complaint and the next action or review date on the lower portion of the page.



← Court Record Card

- 1.9 File the court record in case number order in the tub file.
- 1.10 Prepare a three-part index card form. Enter the name of the plaintiff and the defendant, last name first, and the case number.



- 1.11 Detach the three parts of the index card form.
- 1.12 File the plaintiff and defendant index cards in alphabetic order in the index system.
- 1.13 File the calendar card either by the next action date (if a hearing is already scheduled) or by review date (four months from the date of filing the summons and complaint).
- 1.14 Place the summons and complaint and other case papers in the case folder. File the case folder by case number.

2. RECEIPT AND ENTRY OF SUBSEQUENT DOCUMENTS

Once the initiating document has been filed, other papers called subsequent papers are received periodically to be entered on the court record card and filed in the case folder. These papers may be filed in person by the parties, received through the mail, or received directly in the courtroom.

- 2.1 Accept, date stamp, and, if appropriate, stamp "Filed" on the first page of the subsequent papers.
- 2.2 Enter the date received and a brief description of "Filed" papers on the court record card.
- 2.3 Take other action as appropriate which may be indicated in the content of the papers.
- 2.4 Return the court record card to the tub file.
- 2.5 File the documents in the case folder.

3. ADJOURNMENTS

At any time during the processing of a case, a hearing or activity may be cancelled (adjourned) on request of a party or the court and rescheduled for a new date.

Clerk responsibilities as a result of an adjournment include updating the court record card and moving the calendar card to a new date.

- 3.1 Receive notice and approval of adjournment.
- 3.2 Reschedule or receive notice of the new hearing or review date.
- 3.3 Pull the court record card; note the adjournment and new hearing or review date; return court record card to tub file.
- 3.4 File the calendar card under the new hearing or review date in the future action tub file.
- 3.5 Note the new date on the calendar book or calendar worksheet.

4. CALENDARING OF SUBSEQUENT HEARINGS

The court is responsible for calendaring the activities of cases as they proceed through the court system.

These activities may include scheduling conferences, pre-trial and motion hearings, trial and post-trial hearings. For each of these types of hearings, certain basic procedures apply. The same procedures apply whether the calendar prepared is a daily, weekly or monthly calendar.

- 4.1 In advance of the hearing, prepare the calendar by pulling the calendar cards filed under the appropriate hearing date or by referring to the calendar book or calendar worksheet.

- 4.2 Type and distribute the calendar in accordance with local procedure.
- 4.3 Using the calendar, pull case folder(s) and bring or send to courtroom for use during the hearing.

5. CASE MONITORING

Case monitoring consists of the regular checking of the future action tub file (calendar card tickler system) to identify cases in which a scheduled activity appears not to have occurred and to determine what necessary follow-up action should be taken.

- 5.1 Each day, check the future action tub file for calendar cards which remain filed under the previous day in the tickler system.
- 5.2 Pull the court records for those cards which remained filed under the previous date to determine what action was to have occurred on the previous date.
- 5.3 If the event scheduled for the previous day was for review after the filing of the summons and complaint, take the following action:
 - (a) If both the affidavit of service and the answer have not been filed, the action should be dismissed in accordance with local procedures.
 - (b) If the answer has not been filed, depending on local procedure:
 - (1) Notify the plaintiff's attorney to file an affidavit of default and default judgment or to schedule a motion for default judgment or
 - (2) Prepare an order directing dismissal or prepare a show cause order and order of dismissal for failure to prosecute if either the affidavit of service and answer or a motion for default judgment are not filed within a specified time period (e.g., 60 days).

5.4 If the event scheduled for the previous day was a hearing, determine if no appearance was made or if the clerk's office was not notified of the results of that hearing.

(a) If no appearance was made, notify the trial judge to determine action to be taken.

(b) If an appearance was made, determine the results of the event including the date of next action: move the calendar card in the future action tub file to the date of the next action: update the calendar book or calendar worksheet and the court record card.

(c) If an adjournment was granted, move the calendar card in the future action tub file to the new date; update the calendar book or calendar worksheet and the court record card.

5.5 If the event scheduled for the previous day was the filing of briefs, notify the trial judge to determine action to be taken or for the scheduling of a new review date.

5.6 If the event scheduled for the previous day was the review for the filing of the trial judge decision following the filing of a final matter for decision, notify the trial judge of the time limit.

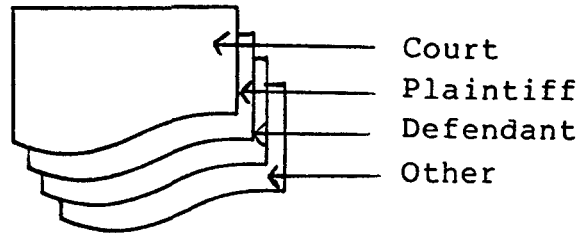
6. HEARING/TRIAL

The clerk's basic recordkeeping responsibility for all court hearings and trials is the same. It consists of the taking of concise minutes of the proceeding, updating the court record card, and filing the minutes and case papers received during the hearing in the case folder.

6.1 Take minutes in longhand on a minutes form.

6.2 Review the minutes for any actions required for calendaring, next action date or review dates.

- 6.3 If a next appearance or action date is given, prepare and distribute in the courtroom the notice form.



- 6.4 Update the court record card including entry of the next action date and return to the tub file.
- 6.5 File the calendar card under the next action date in the future action tub file.
- 6.6 File minutes and other case documents received during the hearing in the case folder.

7. CASE DISPOSITION

A case is closed when the issues stated in the complaint have been resolved and an order to that effect has been entered. The most common forms of closing orders are:

- Trial Judgments (usually with verdict)
- Findings of Fact, Conclusions of Law and Judgment Orders
- Summary Judgment (as to all parties)
- Judgment of Non-Suit (Judgment of Involuntary Non-Suit)
- Order of Default and Judgment
- Order of Change of Venue (Outgoing)
- Any order transferring case to another court
- Dismissal Orders
- Decrees
- Petitions to Register Foreign Judgments

A case must be closed as to all of the parties before a case is considered truly disposed. The clerk must read an order carefully to determine if it is a case disposition order.

- 7.1 Receive and file stamp judgment signed by the judge or if so directed, the judgment should be signed by the clerk. Update court record card.
- 7.2 Enter the disposition information on the top portion of the court record card; update the lower portion of the court record card.
- 7.3 File the calendar card in the future action tub file 90 days after the date of the granting of the judgment.
- 7.4 File the court record card in the tub file.
- 7.5 If the action is dismissed, place case documents in case folder; go to Step 8 (Case Closing).
- 7.6 File the judgment in the case folder.
- 7.7 If taxation of costs is received, file and date stamp; enter costs on the judgment and update the court record card.

8. CASE CLOSING

Case closing activity is performed 90 days after the disposition of the case to allow for the expiration of the appeal period. The purpose of case closing procedures is to eliminate from the case folder all documents which are not official case papers so that only essential case documents are retained for long term storage.

- 8.1 When the 90 day review date in the future action tub file is reached, pull the case folder and remove documents marked "Received".
- 8.2 Dispose of all documents marked "Received" as well as all unstamped informal notes and memos.
- 8.3 Dispose of all duplicate copies of documents contained in the case folder, retaining only one copy of each document.
- 8.4 Remove all staples, paper clips and colored backing sheets.

- 8.5 Place all remaining documents marked "Filed" in chronological order, so that the most recently filed document is on top.
- 8.6 Put the "Filed" documents into the case folder fastener.
- 8.7 File the calendar card in the case folder.
- 8.8 File case folder by case number.

POST DISPOSITION PROCEDURES

A number of clerk activities can be involved after a case is closed. The following describes procedures to be used in accomplishing post-judgment duties.

9. JUDGMENT DOCKETING (STATE JUDGMENT/FOREIGN JUDGMENT)

- 9.1 Receive transcript from judgment, and file stamp.
- 9.2 Receive fee and issue receipt.

NOTE: At this point the procedures for implementing the "Full Faith and Credit" Act should be delineated.

- 9.3 Prepare index cards indicating party names, date and hour filed, origin county and case number.
- 9.4 File the transcript in a group file by date of docketing.
- 9.5 For foreign judgment transcripts, prepare and send to the debtor and creditor a notice of foreign judgment entry.

10. SATISFACTION

- 10.1 Receive fee and issue receipt.
- 10.2 Check for adequacy of the satisfaction:
 - (a) If written satisfaction is received, it is acceptable if:

- (1) it is signed and acknowledged by the owner of the judgment, and the judgment is a local county judgment, or
 - (2) no assignment has been filed and it is signed and acknowledged by the owner's attorney of record within five years after the judgment was signed, and the judgment is an own county judgment.
 - (b) If satisfaction is to be accomplished by signature on the docket, it is acceptable if:
 - (1) signed by the owner of the judgment and it is an own county judgment, or
 - (2) signed by the owner's attorney of record within five years after the judgment was signed, if no assignment has been filed, and is an own county judgment.
 - (c) For other county judgment, receive certified transcript of docket or a sealed clerk's certificate showing the satisfaction in the county which issued the transcript from the judgment docket.
- 10.3 If written satisfaction is adequate, file stamp.
- 10.4 Check the case file to determine if judgment is there.
- 10.5 Pull the court record card and enter the satisfaction. If satisfaction is acknowledged by signature on the docket rather than by the filing of a written satisfaction, witness and date the signature and indicate the satisfaction on the court record card.
- 10.6 File the satisfaction in the case folder (own county judgment), staple to the transcript from judgment (other county judgment or foreign judgment), lien or DILHR warrant, or file in delinquent income tax satisfaction group file.

11. CERTIFICATION OF JUDGMENT

- 11.1 Receive fee and issue receipt.
- 11.2 Pull the judgment document from the case file.
- 11.3 Stamp certification on the judgment, sign and seal.
- 11.4 Refile judgment document card in the case file.
- 11.5 Give or mail the certified from judgment docket to requestor.

NOTE: W.S. 806.245(2)(b) provides that,

"(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".

12. EXECUTION

- 12.1 Receive fee and issue receipt.
- 12.2 Pull the judgment card from the case file.
- 12.3 Check that the execution is issuable by determining that:
 - (a) either costs have been taxed or 30 days has elapsed since judgment has been entered [§ 815.04(1)];
 - (b) 15 days have elapsed since the filing of a foreign judgment [§ 806.24(3)(c)];
 - (c) the court has issued an order to extend time for execution where no execution has been issued within a 5 year period following the signing of the judgment [§ 815.04(1)];
 - (d) leave of court has been granted to an individual other than the judgment creditor to apply for execution [§ 814.04(1)];

- (e) less than 20 years have elapsed since the signing of the judgment [§ 814.04(1);
- (f) the judgment is an own county judgment [Wilson vs Craite, 60 Wis.2d 350, 210 N.W. 2d 700]; and
- (g) no other execution is currently outstanding in the county to which issued. [§§ 815.04(1), 815.07]

12.4 Pull execution form and prepare.

12.5 Sign and seal the document. [§815.05]

12.6 Give or send the execution to the requestor or law enforcement agency.

12.7 Note date and county of execution on file copy.

12.8 Refile judgment in the case file.

12.9 When the execution is returned, enter the return on the court record card. Enter also any money collected.

13. REPLEVIN EXECUTION

13.1 Receive fee and issue receipt.

13.2 Complete a standard replevin execution form by entering the specified information from the court record card.

13.3 Sign and seal the document.

13.4 Refile the court record.

13.5 Give or send the replevin execution to the requestor or law enforcement agency.

14. CERTIFICATE OF JUDGMENT

14.1 Receive fee and issue receipt.

14.2 Pull the court record card and case folder.

14.3 Prepare certificate of judgment using information from court record card or case folder.

- 14.4 Reproduce the notice of entry of judgment which is filed in the case folder or prepare a certified copy of the judgment.
- 14.5 Attach the notice of entry of judgment or the certified copy of the judgment to the certificate of judgment and send to the Department of Motor Vehicles, to the plaintiff or to the plaintiff's attorney, as requested.
- 14.6 Refile the court record card and case folder.

15. GARNISHMENTS

- 15.1 Receive the complaint or the summons and complaint. Check the complaint or the index to determine if the original judgment on which the summons and complaint is based is filed as a civil case in your court.
 - (a) If the original judgment is filed, assign the original case number and a sequential alpha suffix to the garnishment action [e.g., if the original judgment case number was 81-CV-102, the case number of the first garnishment action would be 81-CV-102A, the second garnishment action would be 81-CV-102B, etc.].
 - (b) If the original judgment is not filed as a civil case in your court, return the summons and complaint to the filing party.
- 15.2 Prepare and/or sign the summons. [§ 812.04(1)]
- 15.3 Assign a judge in accordance with local procedure.
- 15.4 Authenticate the original and copies of the summons and complaint by stamping on the first page of the original and copies.
- 15.5 File stamp the first page of the original summons and complaint.
- 15.7 Receive filing fee and issue receipt.
- 15.6 Return one copy of the summons and complaint to the plaintiff or plaintiff's attorney.
- 15.8 Return the copies of the summons and complaint for service in accordance with local procedures.

15.9 Enter on the original court record card the date filed, the garnishment case number, the name(s) of the garnishee(s) and the amount of the plaintiff's claim.

15.10 File the calendar card in the future action tub file 60 days from the date of the filing of the summons and complaint for review of the filing of the proof of service.

If proof of service is not filed within the 60 day period, the action should be dismissed in accordance with local procedures.

15.11 Receive and file stamp the proof of service; update the court record card; file proof of service in the case folder. Move the calendar card in the future action tub file from the 60 day review date to 20 days after the date of service for review of the filing of the answer.

If the answer is not received within the 20 day time limit, follow procedures described in Step 4 above to set the case for default hearing; receive judgment; update the court record card; and file the calendar card in the case folder.

15.12 Receive and file stamp the answer; move the calendar card in the future action tub file to 20 days after the filing of the answer for review of the filing of a reply; update the court record card; file the answer in the case folder.

15.13 Receive and enter subsequent documents following procedures described in Step 2 (Receipt and Entry of Subsequent Documents) above.

15.14 Upon the expiration of the 20 day review date for the filing of a reply;

(a) If the action is not contested,

(1) Receive order to garnishee to pay/release of garnishee and obtain judge's signature. File original in case folder and send copy or copies to garnishees.

(2) File the calendar card in the case folder.

(b) If the action is contested,

- (1) Set the case for hearing and complete and distribute the notice form as described in Step 6.3.
- (2) Follow procedures described in Step 4 (Calendaring of Subsequent Hearings) and Step 6 (Hearing/Trial).
- (3) If garnishment is upheld, follow procedures described in Step 15.13(a) above. If action is dismissed, update the court record card.
- (4) File the calendar card in the case folder.

FAMILY PROCEDURE

PROCEDURE

1. CASE INITIATION

The action is commenced by the filing of a petition with the clerk of court by the parties to the action or an attorney. For some family actions, the petition may be filed by other agencies such as Child Support or the prosecutor. A summons must also be filed when the petition is not filed jointly.

1.1 Receive filing fee and issue receipt.

1.2 Receive initiating papers, e.g., petition and summons or petition of consent and order appointing guardian ad litem, or URESA Returns.

Temporary orders setting up support may be filed at the time of case initiation. In this event, see Step 2.3 below for procedures to establish a support account.

1.3 Assign a judge in accordance with local procedures.

1.4 Assign a case number by selecting the next available prenumbered case folder from the family series.

1.5 Authenticate the petition and summons by stamping on the first page of the original and first page of each copy.

1.6 Distribute the copies of the petition and summons for service in accordance with local procedures.

1.7 Enter the basic case information on the top portion of the family court record card. On the lower portion, enter the filing of the petition, summons and any other papers, and the next action or review date.



Court Record

- 1.8 Prepare an index card form by entering the full names (last name first) of the petitioner and respondent and the case number.
In one party actions, (e.g., In Re:) throw away the respondent index card.
- 1.9 Detach the three parts of the index card set.
- 1.10 File the petitioner and respondent index cards by the first letter of the last name, in alphabetical order in the index system.
- 1.11 Check index to determine if a divorce action has been previously filed. If a pending divorce action is discovered, an order for dismissal of the pending action on the judge's motion should be entered. Copies of this order should be sent to the attorneys and parties.
- 1.12 File the calendar card in the future action tub, either by next action date (if a hearing is already scheduled), or by review date. Review dates for family cases are recommended as follows:

	<u>(Suggested Review Times)</u>
(a) Divorce	365 days
(b) URESA (initiating)	No review date; dispose of calendar card
(c) URESA (responding)	365 days
(d) Support Orders	365 days
- 1.13 Place the petition and summons and other papers in the case folder. File by case number.
- 1.14 File the court record card in case number order in the tub file.

2. RECEIPT AND ENTRY OF SUBSEQUENT PAPERS

Once a case has been initiated, other documents called subsequent papers are received periodically to be entered on the court record card and filed in the case folder. These papers may be filed in person by the parties, their attorneys, or the family court

commissioner. All documents should be reviewed carefully to determine if any action is required by the clerk.

- 2.1 Accept, date stamp and, if appropriate and stamp "Filed" on the first page of subsequent papers.
- 2.2 Enter the date received and brief description of "Filed" papers on the court record card.
- 2.3 Take other actions as appropriate which may be indicated in the content of the papers. If the subsequent paper is a:

(a) Support Order

- (1) Create a maintenance special account ledger card. (See Accounting Procedures for detailed instructions.)

A maintenance account card should be set up upon receipt of the order requiring support payments through the court. Do not wait for receipt of the first payment.

- (2) If payments are received prior to an order being filed, disbursement should be held until the order is received. The family court commissioner should ensure the proper and timely filing of such temporary orders for support.

(b) Order for suspension of proceedings to effect reconciliation

- (1) Move the calendar card to 90 days from the date of the order.
- (2) Review the order to determine if changes in support have been ordered by the court during the 90-day period of reconciliation.

If changes are spelled out in the order, take the appropriate action on the maintenance account card.

If no changes are indicated, make no assumption of a change.

(c) Change to Support Order

- (1) Upon receipt, change the terms of the support payments on the maintenance account card as specified in the court order.
- (2) Refile the maintenance account card.

(d) Paper Requiring or Requesting a Hearing

- (1) Establish the hearing time in accordance with local procedure.
- (2) Enter on calendar worksheet.
- (3) Update the calendar card and move it to the hearing date.

(e) Disclosure of Assets

- (1) Place the disclosure statement in an envelope and mark case number and "confidential" on the envelope.
- (2) Place envelope in the case folder.

The confidential disclosure envelope should be removed when the file is reviewed by any person not authorized access to the Disclosure of Assets information.

(f) Briefs from Attorneys

- (1) Send briefs to the assigned judge.

(g) Order for Arrest

- (1) If an order for arrest for non-support is received, place the calendar card in the integrated warrant/suspension file by the first letter of the respondent's last name.

A red dot should be placed on the case folder if an arrest order is outstanding. This will alert a clerk handling the case file that an arrest order may need to be recalled.

(h) Assignment of Support or Termination of Assignment

(1) Receive assignment information from social services agency.

(2) Update support ledger card.

2.4 File subsequent papers in the case folder as appropriate.

2.5 Return the court record card to the tub file.

3. ADJOURNMENTS

At any time during the processing of a case, a hearing or activity may be cancelled (adjourned) on request of a party or the court and rescheduled for a new date. Clerk responsibilities as a result of an adjournment include updating the court record card and moving the calendar card to a new date.

3.1 Receive notice and approval of adjournment.

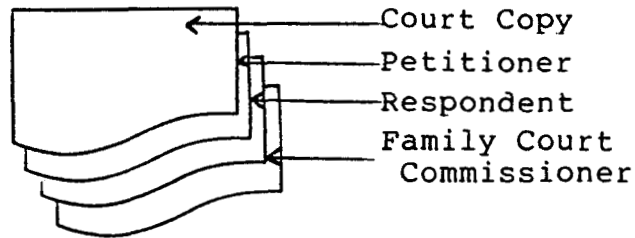
3.2 Reschedule or receive notice of the new hearing date.

3.3 Pull the court record card, note the adjournment and new hearing or review date, return court record card to tub file.

3.4 File the calendar card under the new hearing or review date in the future action tub file.

3.5 Note the new date on the calendar book or calendar worksheet in accordance with local procedures.

3.6 If the adjournment is requested by the court, or if by local practice, it is the clerk's responsibility to notify the parties of the new date, prepare and distribute the notice form.



4. CALENDARING OF SUBSEQUENT HEARINGS

The court is responsible for calendaring the activities of family cases as they proceed through the court system. These activities may include scheduling conferences, pre-trial and motion hearings, trial and post-trial hearings. For each of these types of hearings, certain basic procedures apply. The same procedures apply whether the calendar prepared is a daily, weekly or monthly calendar. The family court commissioner normally takes care of scheduling and noticing for the hearings of that office.

- 4.1 In advance of the hearing, prepare the calendar by pulling the calendar cards filed under the appropriate hearing date or by referring to the calendar book or calendar worksheet.
- 4.2 Type and distribute the calendar in accordance with local procedure.
- 4.3 Using the calendar, pull case folder(s) and bring or send to the courtroom for use during the hearing.
- 4.4 If this is an hearing involving support, pull the support ledger card and photocopy. Place the copy of the support ledger card in the case folder and refile the original ledger card.
- 4.5 If this is a final hearing, check the folder to determine that documents required by the judge have been filed. Notify the trial judge if any of the necessary papers have not been filed.

5. CASE MONITORING

Case monitoring consists of the regular checking of the future action tub file (calendar card tickler system) to identify cases in which a scheduled activity appears not to have occurred and to determine what necessary follow-up action should be taken.

- 5.1 Each day, check the future action tub file for calendar cards which remain filed under the previous day in the tickler system.
- 5.2 Pull the court records for those cards which remained filed under the previous date to determine what action was to have occurred on the previous date.
- 5.3 If the event scheduled for the previous day was the one year review after the filing of the petition and summons, take the following action:

- (a) If both the proof of service and the answer have not been filed, the action should be considered for dismissal in accordance with local procedures.

When a joint petition is filed, no service is required.

- (b) If proof of service has been filed but the respondent's answer has not been filed and no payment has been received, depending on local procedure:
 - (1) Set the case up for review by the family court commissioner or judge and request instructions on action to be taken, or a new review date, or
 - (2) Consider the case for dismissal.
(Note: notice to the judge may be a prepared form order of dismissal.)

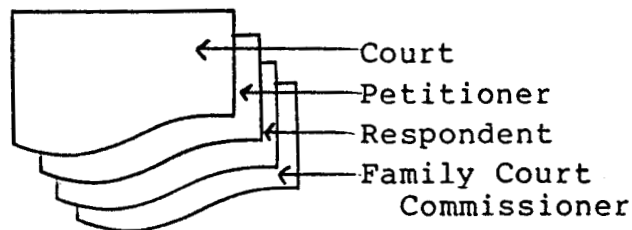
- 5.4 If the event scheduled was the end of the 90 day reconciliation period, notify the family court commissioner or judge for action to be taken, or for the scheduling of a new review date. See Step 2.3 above.)
- 5.5 If the event scheduled was the 45 day review for filing of the findings of fact, conclusions of law, and judgment, notify the trial judge to determine action to be taken.
- 5.6 If the event scheduled was submission of briefs by attorneys, notify the judge and request action to be taken. (See Step 2.3 (b) above.)
- 5.7 If the event scheduled was the 80 day review for filing of the trial judge decision following the filing of briefs, notify the trial judge of the 90 day limit.
- 5.8 If the event scheduled for the previous day was a hearing, determine if no appearance was made or if the clerk's office was not notified of the results of that hearing.
 - (a) If no appearance was made, notify the trial judge to determine the action to be taken.
 - (b) If an appearance was made, determine the results of the event including the date of the next action. move the next calendar card in the future action tube file to the date of the next action. update the calendar book or calendar worksheet and the court record card.
 - (c) If an adjournment was granted, move the calendar card in the future action tub file to the new date. update the calendar book or calendar worksheet and the court record card.
 - (d) Determine if noticing is required. (See Step 3.6 above.)

When information or actions are requested from the family court commissioner, the calendar card should be filed under the date which is 30 days after the request for an answer.

6. HEARING/TRIAL

The clerk's basic recordkeeping responsibility for all court hearings and trials is the same. It consists of the taking of concise minutes of the proceeding, updating the court record card, and filing the minutes and case papers received during the hearing in the case folder. [Clerk responsibilities for keeping trial records such as exhibits and juror attendance are not covered by the model system. These duties should be performed in accordance with local procedures.]

- 6.1 Take minutes in longhand on the minute form.
- 6.2 Review the minutes for any actions required for calendaring, next action date, or review dates.
- 6.3 If the next appearance or action date is given, prepare and distribute in the courtroom the notice form.



- 6.4 Update the court record including entry of the next action date and return to the tub file.
- 6.5 File the calendar card under the next action date in the future action tub file.
- 6.6 File minutes and other case documents received during the hearing in the case folder.

7. CASE DISPOSITION

A case is closed when the issues stated in the petition have been resolved and an order to that effect has been entered. In family cases certain orders can be granted orally in court to become effective immediately. The actual written order for divorce, support, custody, etc., may follow sometime thereafter. Both the "date granted" and "date judgment filed" are important dates and must be entered on the court record and the WCIS disposition report. The most common forms of closing orders are:

Findings of Fact, Conclusions of Law and Judgment Orders
Order of Default and Judgment
Order of Change of Venue (Outgoing)
Any order transferring case to another court
Dismissal Orders

The clerk must read an order carefully to determine if it is a case disposition order.

- 7.1 Enter the disposition information on the top portion of the court record card; update the lower portion of the court record card.
- 7.2 File the calendar card in the future action tub file 30 days after the date of the granting of the divorce judgment.
- 7.3 Receive judgment signed by the judge or if so directed, the judgment should be signed by the clerk.
- 7.4 Send the completed vital statistics form VS-21 to the Bureau of Vital Statistics in accordance with section 767.37(1)(a).
- 7.5 If the action is dismissed, place case documents in case folder and go to Step 9, Case Closing.

- 7.6 Receive the findings of fact, conclusions of law, and the written judgment or other final order. An original and two true copies of the divorce judgment must be submitted.
- 7.7 File stamp the findings of fact, conclusions of law, and judgment or other final orders.
- 7.8 Review the judgment for support matters.
 - (a) If judgment requires a change in terms of support, change the account card in accordance with the new terms.
 - (b) Refile the account card.
- 7.9 Send one copy of the judgment to the petitioner and one copy of the judgment to the respondent at their last known address. Note mailing on the court record card.
- 7.10 File the original judgment in the case folder.
- 7.11 Update the court record and return to tub file.
- 7.12 Move calendar card to 90 days from the date of entry of judgment.

8. CASE CLOSING

Case closing activity is performed 90 days after the disposition of the case to allow for the expiration of the appeal period. Case closing procedures eliminate from the case folder all documents which are not official case papers so that only essential case documents are retained for long term storage. Case files will be in a suitable condition for review and possible microfilming when this procedure is followed.

- 8.1 When the 90-day review date is reached in the future action tab file, pull the case folder and remove documents marked "Received".
- 8.2 Dispose of all documents "Received" as well as any unstamped informal notes and memos.
- 8.3 Dispose of all duplicate copies of documents contained in the case folder; retain only one copy of each document.
- 8.4 Remove all staples, paper clips, and colored backing sheets.
- 8.5 Place all remaining documents marked "Filed" in chronological order, so that the most recently filed document is on top.
- 8.6 Put the "Filed" documents into the case folder fastener.
- 8.7 File the calendar card in the case folder (for use in post-judgment activity).
- 8.8 File case folder by case number.

9. POST-DISPOSITION MOTIONS

In family cases, particularly divorce actions, post-disposition activity is very common for further proceedings on matters of support, visitation, child custody, etc. When post judgment motions are filed, the original case folder is reactivated. A new filing fee is not required for these post-disposition actions. The steps outlined below are a brief outline of the steps involved in post-disposition actions.

- 9.1 Receive and file stamp the initiating motion or order to show cause.
- 9.2 Pull and update the court record card.

- 9.3 Pull the calendar card out of the case file, update for the next action date, and file in the future action tub file.
- 9.4 At the hearing, take minutes and follow other procedures for hearings. (See Step 6 above.)
- 9.5 Upon receipt of the order, file stamp and update the court record card.
- 9.6 Review the order and, if appropriate, modify the maintenance account ledger card based on the contents of the order.
- 9.7 File the order in the case folder, and follow other case closing procedures as follows: (See Steps 7 and 8 above.)
 - (a) Move calendar card to 90 days from date of entry of the order, at the end of that period:
 - (b) Remove all staples, paper clips and colored backing sheets from post disposition papers.
 - (c) Place all post-disposition documents in chronological order, so that the most recently filed document is on top.
 - (d) Put the "Filed" documents into the case folder fastener.
 - (e) File the calendar card in the case folder (for use in further post judgment activity).
 - (f) File case folder by case number.
 - (g) Case disposition is similar to other family cases. A maintenance account ledger card is set up or modified based on the order. (See Step 2.3 (a)(1) above.)
 - (h) For post-disposition motions, see Step 9 above.

SPECIAL PROCEDURES

There are several special or unique procedures in family matters. Reciprocal matters are the most significant because they require the cooperation of courts in different states.

In these actions, the court is either the "Initiating Court", meaning the court in which the action is initiated, or the "Responding Court", meaning the court in whose jurisdiction the obligor resides. URESA or reciprocal cases undergo the same opening procedures as other types of family cases, except that in "Initiating Court" actions, the calendaring function is not performed because the hearings will be held in the "Responding Court" in another state. (See Step 1.)

10. "Initiating Court" Actions [§ 52.10(14)]

Court review in these actions is undertaken to find that the respondent owes support as alleged in the petition and directs the clerk to forward papers to the responding court.

- (a) Open court case by following procedures described in Step 1 above.
- (b) Certify three copies of the petition, one copy of section 52.10 and a transmittal order signed by the judge.
- (c) Case is closed on the date the papers are forwarded, usually the same day as filed.

- (d) Subsequently, when support orders are received from the responding court, they are filed in the case folder. [§ 52.10(25)]

Maintenance accounts are set up or modified only after the order is received.

11. "Responding Court" Actions [§ 52.10(18)]

When reciprocal (URESAs) actions are received from other counties or states to be acted upon by the Menominee Tribe, the following actions are taken:

- (a) Case initiation follows the same procedure as outlined in Step 1 above.
- (b) Notify the tribal attorney, prosecutor, or the child support agency with two certified copies of the petition, in accordance with local practice.
- (c) Place the calendar card in a 60-day review status in the future action tub file. If no action takes place within 60 days, contact the responsible agency.
- (d) Upon request, set for hearing in accordance with request from the district attorney.
- (e) Hearing procedures are the same as for other family matter hearing. (See Step 6 above.)
- (f) Receive signed order. Send a copy to the initiating court [§ 52.10(25)] and to the obligor.
- (g) Case disposition is similar to other family cases. A maintenance account ledger card is set up or modified based on the order. (See Step 2.3 (a) (1) above.)
- (h) For post-disposition motions, see Step 9 above.

12. Special Birth Record Correction.

Review the judgment to determine if there is a finding that the husband is not the true father of a child born in the State of Wisconsin. If so, obtain a copy of the judgment, certify the judgment, and send the change of birth record, \$4.00 fee, and a certified copy of the judgment to the Bureau of Vital Statistics.

PATERNITY

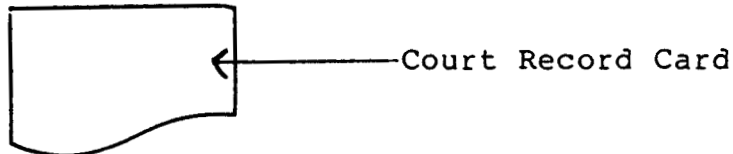
PROCEDURE

1. CASE INITIATION

The action is commenced by the filing of a petition with the clerk of circuit court. However, prior to the filing of the petition, the court will be required to assign a return date so that the summons may contain the date, time, room, judge, and address of the hearing location.

- 1.1 Upon request, assign a return date and enter in the calendar book or worksheet in accordance with local procedure.
- 1.2 Receive the petition and summons.
- 1.3 Carry out quality review procedure as follows:
 - (a) Requirements for the petition and summons are specified in sections 767.45(5) and 767.455. The case title, return date, and time of the hearing are necessary for case initiation.
 - (b) If an error or omission is noticed and the filing party is present, the problem should be brought to his or her attention. The petition and summons should then be accepted for filing, whether or not the problem is corrected.
 - (c) If a problem is noticed when the filing party is not present, accept the papers as filed, but follow through with action to either obtain the necessary information or correct the format in accordance with local procedure.
- 1.4 Assign a case number by selecting the next available prenumbered case folder from the paternity series.
- 1.5 Authenticate the original and copies of the petition and summons by stamping the first page of the original and copies. [§ 767.475(8) and § 801.09(4)]

- 1.6 Return the copies of the petition and summons to the initiating agency for service in accordance with local procedure.
- 1.7 Pull a court record form. [§ 59.39(2)] Enter basic case information on the top portion of the court record form and enter the filing of the summons and complaint and the next action or review date on the lower portion of the page.

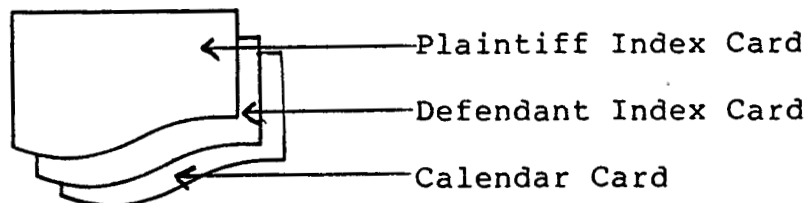


The format of the case title should be as follows:

In RE the Paternity of _____

- Petitioning Party
- Respondent

- 1.8 File the court record card in case number order in the confidential tub file.
- 1.9 Pull index card forms. Enter the name of the petitioner and the respondent, last name first, and the case number. List the child's name in the center of the index card for reference only.



- 1.11 Detach the three parts of the index card form.
- 1.12 File the petitioner and respondent index cards in alphabetic order in the confidential index system.
- 1.13 File the calendar card by date and time of return date in future action tub file.
- 1.14 Place the petition and summons and other case papers in the case folder. File the case folder by case number.

2. RECEIPT AND ENTRY OF SUBSEQUENT DOCUMENTS

Once the initiating document has been filed, other papers called subsequent papers are received periodically to be entered on the court record card and filed in the case folder. These papers may be filed in person by the parties, received through the mail, or received directly in the courtroom.

- 2.1 Accept, date stamp and, if appropriate, stamp "Filed" on the first page of the subsequent papers.
- 2.2 Enter the date received and a brief description of "Filed" papers on the court record card.
- 2.3 Take other action as appropriate which may be indicated in the content of the papers.

For any support agreement or order for support, create a maintenance account ledger card (see Accounting Procedure for detailed instructions) and file under the first letter of the last name of the payor.

- 2.4 Return the court record card to the tub file.
- 2.5 File the documents in the case folder.

3. PREPARATION FOR RETURN DATE HEARING

Preparation for the return date consists of preparing a calendar and pulling case files. Since paternity actions are considered confidential, calendars listing case titles should be kept separate and not posted for public review. [§ 767.53]

- 3.1 Prepare the paternity return calendar by pulling the calendar cards filed under the appropriate date or by referring to the calendar book or calendar worksheet. Distribute calendar in accordance with local procedure.

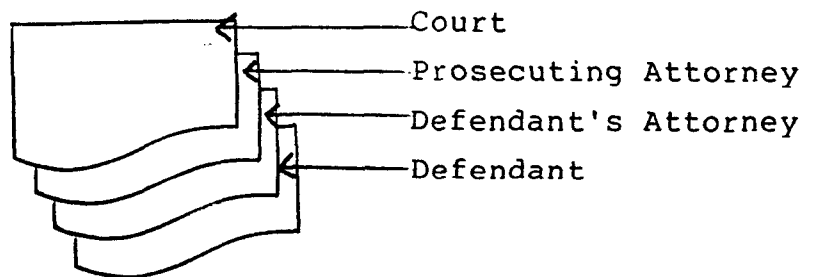
- 3.2 Using the calendar, pull case file(s) and bring them to the family court commissioner and/or courtroom for use during the hearing.

4. RETURN APPEARANCE HEARING

At the initial appearance, the filing parties and/or the defendant may appear to sign a stipulated agreement, request the administration of blood test or the defendant may request counsel. The court may also order an arrest order if the defendant does not appear. The clerk is responsible for taking clear and accurate minutes.

- 4.1 Take minutes in longhand on the Minute form.

- 4.2 If next appearance or action date is given, prepare and distribute in the courtroom the notice form.



5. ACTIONS TO BE TAKEN AFTER RETURN DATE APPEARANCE

Different steps will have to be taken by the clerk depending on the results of the return date appearance. If approval was obtained for signed stipulations and judgments, go to Step 10 (Case Disposition). For other actions, use the following procedures.

- 5.1 Update the court record card including entry of the next action date and return to the tub file.
- 5.2 File the calendar card under the next action date in the future action tub file. If an order for arrest has been issued, place the calendar card in the integrated warrant/suspension file by the first letter of the respondent's last name.

A red dot should be placed on the case folder if an arrest order is outstanding. This will alert the clerk handling the case folder that an arrest order may need to be recalled.

6. ADJOURNMENTS

At any time during the processing of a case, a hearing or activity may be cancelled (adjourned) on request of a party or the court and rescheduled for a new date. Clerk responsibilities as a result of an adjournment include updating the court record card and moving the calendar card to a new date.

- 6.1 Receive notice and approval of adjournment.
- 6.2 Reschedule or receive notice of the new hearing or review date.
- 6.3 Pull the court record card; note the adjournment and new hearing or review date; return court record card to tub file.
- 6.4 File the calendar card under the new hearing or review date in the future action tub file.
- 6.5 Note the new date on the calendar book or calendar worksheet in accordance with local procedures.

7. CALENDARING OF SUBSEQUENT HEARINGS

The court is responsible for calendaring the activities of paternity cases as they proceed through the court system.

These activities may include scheduling conferences, pre-trial and motion hearings, trial and post-trial hearings. [§§ 767.46, 767.46(3), and 767.50]. For each of these types of hearings, certain basic procedures apply. The same procedures apply whether the calendar prepared is a daily, weekly or monthly calendar. Calendars for paternity actions should be kept confidential and not posted for public view. [§ 767.53]

- 7.1 In advance of the hearing, prepare the calendar by pulling the calendar cards filed under the appropriate hearing date or by referring to the calendar book or calendar worksheet.
- 7.2 Type and distribute the confidential calendar in accordance with local procedure.
- 7.3 Using the calendar, pull case folder(s) and bring or send to courtroom for use during the hearing. If this is an order to show cause hearing, pull maintenance account card and photocopy. Place the copy in the case folder and refile the account card.

8. CASE MONITORING

Case monitoring consists of the regular checking of the future action tub file (calendar card tickler system) to identify cases in which a scheduled activity appears not to have occurred and to determine what necessary follow-up action should be taken.

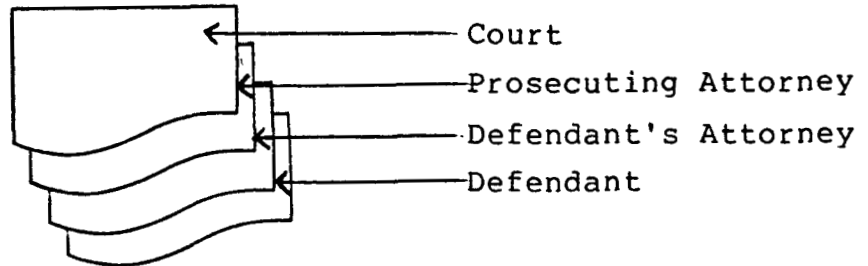
- 8.1 Each day, check the future action tub file for calendar cards which remain filed under the previous day in the tickler system.
- 8.2 Pull the court records for those cards which remain filed under the previous date to determine what action was to have occurred on the previous date.

- 8.3 If the event scheduled for the previous day was a hearing, determine if no appearance was made or if the clerk's office was not notified of the results of that hearing.
- (a) If no appearance was made, notify the trial judge to determine action to be taken.
 - (b) If an appearance was made, determine the results of the event including the date of next action: move the calendar card in the future action tub file to the date of the next action; update the calendar book or calendar worksheet and the court record card.
 - (c) If an adjournment was granted, move the calendar card in the future action tub file to the new date; update the calendar book or calendar worksheet and the court record card.
- 8.4 If the event scheduled for the previous day was the filing of briefs, notify the trial judge to determine action to be taken or for the scheduling of a new review date.
- 8.5 If the next action date has not been determined due to necessary tests or a missing party (where an order for arrest has not been issued), set a review date for 30 days from the last action date and notify trial judge.

9. HEARING/TRIAL

The clerk's basic recordkeeping responsibility for all court hearings and trials is the same. It consists of the taking of concise minutes of the proceeding, updating the court record card, and filing the minutes and case papers received during the hearing in the case folder. (Clerk responsibilities for keeping trial records such as exhibits and juror attendance are not covered by the model system. These duties should be performed in accordance with local procedures.)

- 9.1 Take minutes in longhand on the minutes form.
- 9.2 Review the minutes for any actions required for calendaring, next action date or review dates.
- 9.3 If a next appearance or action date is given, prepare and distribute in the courtroom the notice form.



- 9.4 Update the court record card, including entry of the next action date, and return to the tub file.
- 9.5 File the calendar card under the next action date in the future action tub file.
- 9.6 File minutes and other case documents received during the hearing in the case folder.

10. CASE DISPOSITION

A case is closed when the issues stated in the petition have been resolved and an order to that effect has been entered.

The most common forms of closing orders are:

- Trial Judgments (usually with verdict)
- Findings of Fact, Conclusions of Law and Judgment Orders
- Dismissal Orders
- Stipulations with Approval from the Court

The clerk must read an order carefully to determine if it is a case disposition order. Orders should also be reviewed for any order initiating or changing of support payments.

- 10.1 Enter the disposition information on the top portion of the court record card; update the lower portion of the court record card.
- 10.2 File the calendar card in the future action tub file 90 days after the date of the granting of the judgment.
- 10.3 Receive judgment signed by the judge or, if so directed, the judgment should be signed by the clerk.
- 10.4 File the court record card in the tub file.
- 10.5 If the action is dismissed, place case documents in case folder; go to Step 11 (Case Closing).
- 10.6 Receive and file stamp the judgment.
- 10.7 Update the court record card and return to tub file.
- 10.8 Review the judgment for support matter.
 - (a) If judgment requires a change in terms of support, change the account card in accordance with the new terms.
 - (b) Refile the account card.
 - (c) Review the judgment to determine if there is a finding that a new birth certificate should be issued. If so, obtain a copy of the judgment, certify the judgment, and send the change of birth record, with appropriate fee and a certified copy of the judgment to the Bureau of Vital Statistics. [§ 767.51(2)]

11. CASE CLOSING

Case closing activity is performed 90 days after the disposition of the case to allow for the expiration of the appeal period. Case closing procedures is to eliminate from the case folder all documents which are not official case papers so that only essential case documents are retained for long term storage.

- 11.1 When the 90 days review date in the future action tub file is reached, pull the case folder and remove "received" documents.
- 11.2 Dispose of all "received" documents as well as all unstamped informal notes and memos.
- 11.3 Dispose of all duplicate copies of documents contained in the case folder, retaining only one copy of each document.
- 11.4 Remove all staples, paper clips and colored backing sheets.
- 11.5 Place all remaining documents marked "Filed" in chronological order, so that the most recently filed document is on top.
- 11.6 Put the "Filed" documents into the case folder fastener.
- 11.7 File the calendar card in the case folder.
- 11.8 File case folder by case number.

12. POST-DISPOSITION

A number of clerk activities can be required after a case is closed. Post-disposition activity is very common for further proceedings on matters of support, visitation, child custody and the like. When new actions are filed, the original case folder is reactivated. The procedures below are brief outlines of the steps involved in post-disposition action. The detailed procedures for each step are described above.

- 12.1 Receive and file stamp the motion or order to show cause.
- 12.2 Pull the court record card and enter the new action information. File the court record card in an active status in the tub file.
- 12.3 Pull the calendar card out of the case folder, update for the next action date, and file in the future action tub file.

- 12.4 At the hearing, take minutes and follow other procedures for hearings.
- 12.5 Upon receipt of the order from the attorneys, file stamp and update the court record card.
- 12.6 Review the order and, if appropriate, modify the maintenance account card based on the contents of the order.
- 12.7 File the order in the case folder and follow other case closing procedures.

RULE 1. COMPLAINT. (a) All criminal prosecutions for violation of the tribal Law and Order Code shall be initiated by complaints. A complaint is a written statement sworn to by the complaining witness and charging that a named individual(s) had committed a particular criminal offense.

(b) Complaints shall contain:

- (1) The signature of the complaining witness sworn to before a tribal judge or an individual designated by the Chief Justice; and
- (2) A written statement by the complaining witness describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained; and
- (3) The name or description of the person alleged to have committed the offense; and
- (4) The Section of the tribal code allegedly violated; and
- (5) The above written statement may be incorporated by reference into the sworn complaint.

(c) The Chief Justice of the Supreme Court may designate an individual or individuals who shall be available to assist persons in drawing up complaints, and who shall screen them for sufficiency. Complaints shall then be submitted without unnecessary delay to the tribal judge to determine whether a warrant or summons should be issued.

(d) If the complaint, or the complaint together with other sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the Court shall issue a warrant pursuant to Rule 3, instructing the Tribal Police to arrest the named accused or, in lieu thereof, the Court shall issue a summons commanding the accused to appear before the Court at a specified time and place to answer to the charge.

(e) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the Court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

MENOMINEE INDIAN RESERVATION
Menominee Tribal Court

COMPLAINT

CASE NO.

CRIMINAL

Court Address: P.O. Box 428 Keshena, Wisconsin 54135

Court Telephone No.:(715) 799-3348

MENOMINEE INDIAN TRIBE,

Plaintiff,

vs.

DOB:

Defendant.

OFFENSE INFORMATION

Date

Time

Location of Incident

Victim or
Complainant

Complaining
Witness

Additional Witnesses

CHARGE

Did violate the following section(s) of 25 CFR as provisionally adopted in Title 2A as part of the Law and Order Code of the Menominee Indian Tribe.

Count 1. Section

Count 2. Section

Count 3. Section

Count 4. Section

The complaining witness says that on the date and at the location stated above, the Defendant, contrary to law, did (describe incident):

Count(s)

Description of Incident

☐ Continued on Reverse Side

The complaining witness asks that Defendant(s) be apprehended and dealt with according to law. The written statement(s) attached hereto is/are incorporated into this complaint.

Date

Complaining witness signature

Warrant authorized on _____ by:

Date

Subscribed and sworn to in my presence:

Date

Witness - Clerk of Court

Prosecuting official

Date

Tribal Judge

[illegible]

CRIMINAL PROCEDURE

A. INTRODUCTION

The recordkeeping system for criminal cases contains a number of changes from the traditional recordkeeping practices. The key elements are outlined in the following.

1. A multi-part court record card is used.

This card allows for the creation of the court record, defendant index, and calendar card in a single impression. The court record will be the exclusive case history record.

2. The criminal complaint is numbered at filing.

Using this system, the complaint will be numbered at filing without waiting for the case to be assigned to a judge. This procedure requires that every complaint filed with the court be recorded as a case filing regardless of how soon it is disposed of or whether the defendant can be located. Furthermore, the integrity of the system is based on the essential records -- the case folder, the court record, the case index, and the calendar card -- being linked to each other by a unique identifier, the case number.

3. Cases are always scheduled for a next action or review date.

One basic principle of the system that no case is allowed to be without a next appearance or review date. This principle

assures constant court control of the case and gives a monitoring element basic to good records management. The calendar card which is created at case initiation will be the control record in the system. The card always is filed by the next action date which may be a date for a court appearance or a review of the file to determine the next step. Use of the calendar card will prevent cases from becoming "lost" in the system.

4. Special files are used to periodically review inactive cases

At times, cases go into inactive status pending some action other than a court appearance. These might include serving a warrant or making a time payment. These cases can remain pending almost indefinitely if the action does not occur, unless the files are reviewed and necessary action taken.

A system will be established for cases with outstanding warrants. This file is checked upon the opening of each case to determine if there are any outstanding warrants for the defendant in each new case filed.

In addition, a further check is incorporated since failure to recall an outstanding warrant when an order to recall has been issued can have serious repercussions. When a warrant is issued, a red dot is placed on the outside of the case file. This dot warns the clerks that there is potential for having to recall a warrant in the matter.

A tickler file also will be maintained for cases with time to pay. This file is maintained as part of the accounting function.

5. Separate file series are maintained for criminal and criminal traffic cases.

Maintaining separate numbering systems will help the clerk inventory the different criminal caseloads and will be important if different records retention periods are adopted. In adopting separate file series, the case should remain in its initial file series until disposition. Even if a criminal case is reduced to a traffic case, for example, the case should continue in the criminal file series.

B. PROCEDURE

1. CASE INITIATION

The action is commenced by the filing of a complaint or citation. The date of the first appearance is determined by the prosecutor using time periods allocated by the court. At times the complaint will not be filed prior to the first appearance. If so, the case folder will be created after the first appearance.

1.1 Receive the initiating document and any support papers.

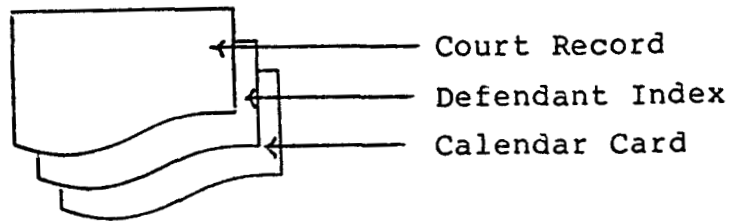
1.2 Assign a case number by selecting the next available number from the criminal traffic series.

If the complaint is filed in open court, assign the number after court when carrying out case opening procedures, and notify the parties of the number assigned by sending them a number assignment card.

1.3 In multiple defendant cases, if only one complaint is filed, make one photocopy for each defendant.

1.4 File stamp the first page of the original complaint, necessary photocopies and each subsequent paper included.

- 1.5 Check for outstanding warrants. If a warrant is found, indicate in the case folder that a warrant is outstanding.
- 1.6 Enter the basic case information on the top portion of the court record card and enter the date and filing of the complaint and other documents on the lower portion of the form.



- 1.7 Detach and file the court record card by case number in the tub file.
- 1.8 Detach and file the defendant index card by the defendant's last name.
- 1.9 Detach and file the calendar card. Update the card with the next action or review event and date. File in the tickler file or warrant/suspension file.
- 1.10 Place the case documents in the file folder and file by case number.

2. PREPARATION FOR FIRST APPEARANCE

Preparation for first appearance consists of preparing a calendar and typing in basic information on the court minute form.

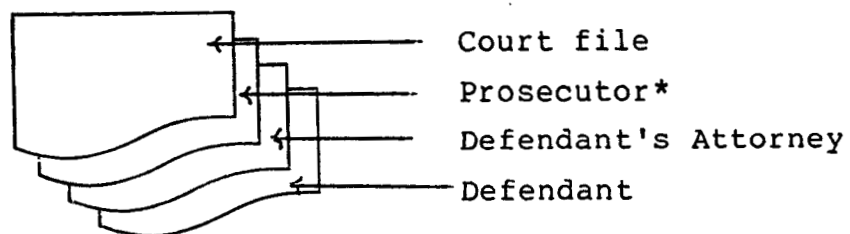
- 2.1 In advance of the hearing, prepare the calendar by pulling the calendar cards filed under the first appearance hearing date or by referring to the calendar book or calendar worksheet.

- 2.2 Add on to the calendar any cases which are scheduled after the calendar is prepared.
- 2.3 Using the calendar, pull case folder(s) and bring or send to the courtroom for use during the hearing.
- 2.4 Enter the basic information on the top of the minute form.

3. FIRST APPEARANCE

At first appearance, the defendant is informed of the charges, custody issues are determined and the defendant can request the appointment of counsel. The defendant also may elect to plead guilty and be sentenced.

- 3.1 Take minutes of appearances, e.g. amount of bond, appointment of attorney, next appearance and other relevant information.
- 3.2 If a next appearance or action date is given, give the parties verbal notice or prepare and distribute in the courtroom a four-part notice form. If the notice of next appearance cannot be completed during court, send the notice to the parties after the appearance.



*The prosecutor is responsible for contacting the police agency.

3.3 After initial appearance, carry out follow-up work as necessary.

- If new hearing is scheduled, note the new date on the calendar card.
- If bail is ordered, type a bail bond.
- If the defendant is ordered to jail, type a commitment.
- If the case is disposed, type out closing orders.

3.4 File minutes in the case folder.

3.5 Update the court record card and return to the tub file.

3.6 File the calendar card by the next appearance date. If an arrest warrant has been issued, file the calendar card in the warrant/suspension file by the defendant's last name. Note on the card the date the warrant was issued. This will alert the clerk when the case should be reviewed for the preparation of a dismissal. Two years is recommended.

A red dot should be placed on the case folder while the warrant is outstanding. This will alert clerks working with the files that the warrant exists and must be recalled immediately should the defendant appear.

4. RECEIPT AND ENTRY OF SUBSEQUENT PAPERS

Once a starting instrument has been filed, other papers called subsequent papers are received periodically to be entered and filed in the case folder. These papers may be filed in person by the parties, received through the mail or received directly in the courtroom.

4.1 Receive, date stamp and, if appropriate, stamp "Filed" on the first page of the subsequent paper. Carry out quality review procedures.

- 4.2 Enter the date received and a brief description of "Filed" papers on the court record card.
- 4.3 Take other action as appropriate which may be indicated in the contents of the papers.
- 4.4 Return the court record card to the tub file.
- 4.5 File the documents in the case folder.

5. ADJOURNMENTS

At any time during the processing of a case, a hearing or activity may be cancelled (adjourned) on request of a party or the court and rescheduled for a new date. Clerk responsibilities as a result of an adjournment include updating the court record card and moving the calendar card to a new date.

- 5.1 Receive notice and approval of adjournment.
- 5.2 Reschedule or receive notice of the new hearing or review date.
- 5.3 Pull the court record card; note the adjournment and new hearing or review date; return court record card to tub file.
- 5.4 File the calendar card under the new hearing or review date.
- 5.5 Note the new date on the calendar book or calendar worksheet in accordance with local procedures.

6. EXAMINATION OF DEFENDANT TO DETERMINE COMPETENCY TO STAND TRIAL

When there is doubt about the defendant's competency to stand trial, the court shall order a hearing to first determine

probable cause and then determine the defendant's competency to proceed.

- 6.1 Receive from the prosecutor after signature by the judge the notice of appointment of physician.
- 6.2 Note the return date on the calendar card and file the calendar card by that date.
- 6.3 Receive the report in triplicate; file stamp original and place in case folder; forward copies to the prosecutor and to the defendant's counsel.
- 6.4 If the report is not received by the return date, notify the physician or facility and the judge.
- 6.5 If the court orders the defendant institutionalized, fill out the commitment order.
- 6.6 File the calendar card according to the maximum period for which the defendant could have been imprisoned if convicted.
- 6.7 When the date under which the calendar card is filed arrives, notify the judge.

7. CALENDARING FUNCTIONS

The court is responsible for calendar activities for criminal cases as they proceed through the court system. These activities include initial appearance, preliminary examination, arraignment, pretrial and motion hearings, and post-trial appearances. For appearances involving a number of cases such as initial appearance the calendar cards can be used for preparation of the calendar. For appearances involving just one or a few cases (e.g. trial, motion hearings), the calendar book is the best source for the calendar. The same principles apply whether the calendar prepared is a daily, weekly or monthly calendar.

- 7.1 In advance of hearing, prepare the calendar by pulling the calendar cards filed under the appropriate hearing date in the future action tab file or by returning to the calendar book or calendar worksheet.
- 7.2 Type and distribute the calendar.
- 7.3 Using the calendar, pull case folder(s) and bring or send to courtroom for use during the hearing.

8. BAIL BONDS

A bail bond is a guarantee supported by the potential forfeiture of the bond that a party will appear in court at the times ordered by the court. Bonds can be cash bonds, property bonds or surety bonds (a person(s) other than the party pledges to pay a specified amount if the party does not appear).

8.1 Cash bond

- (a) Collect the money and give a receipt to the depositor. Use standard receipt form for bail deposited with a law enforcement officer.
- (b) Deposit funds in the bond account. (See Accounting Procedures)
- (c) Return bail money only to the person who posted the bond.

8.2 Surety Bond

- (a) After court approval, receive and file stamp the bond.
- (b) Inspect to ensure that it is completed properly including:
 - Justification of the surety
 - Approval of surety by the court
 - Signature of surety

- (c) Give the depositor a receipt
- (d) File the bond in the case file folder.

8.3 Recognizance Bond (Signature Bond)

- (a) Have defendant sign the bond, which must be approved and witnessed by the judge or clerk.
- (b) Note on the bond the next appearance date.
- (c) Give the defendant a copy of the bond and file the original in the case folder.

8.4 Bond Forfeiture - Criminal

- (a) Upon order of the court forfeiting bail, mail Order of Forfeiture and Surety to the defendant by certified mail.
- (b) Enter the order on the court record card; the calendar card and file 30 days later in the future action tub file.
- (c) At the completion of the 30 day period, request the prosecutor to enter a Motion for Judgment against the defendant and any sureties.
- (d) Upon receipt of the motion, mail copies to the defendant and any sureties.

9. CASE MONITORING

Case monitoring consists of the regular checking of the future action file (calendar card tickler system) to identify cases in which a scheduled activity appears not to have occurred and to determine what necessary follow-up action should be taken.

- 9.1 Each day, check the future action tub file for calendar cards which remain filed under the previous day in the tickler system.

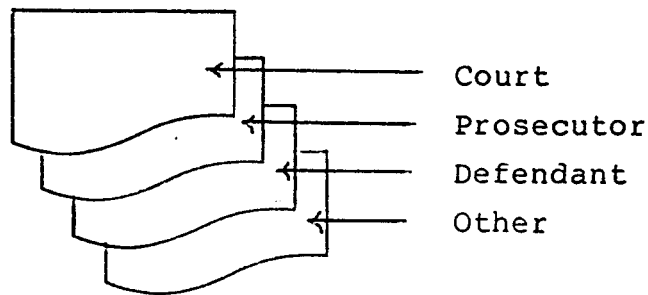
- 9.2 Pull the court records for those cards which remained filed under the previous date to determine what action was to have occurred on the previous date.
- 9.3 If the event scheduled for the previous day was a hearing, determine if no appearance was made or if the clerk's office was not notified of the results of that hearing.
 - (a) If no appearance was made, notify the trial judge to determine action to be taken.
 - (b) If an appearance was made, determine the results of the event including the date of next action; move the calendar card in the future action file to the date of the next action; update the calendar book or calendar worksheet and the court record card.
 - (c) If an adjournment was granted, move the calendar card in the future action file to the new date; update the calendar book or calendar worksheet and the court record card.
- 9.4 If the calendar card is in the warrant/suspension file and is up for review:
 - (a) Either prepare a request for dismissal for the prosecutor's signature or notify him that the recommended two year period has elapsed and a request for dismissal should be submitted.
 - (b) Keep the calendar card in the pending action section or at the desk and take appropriate action when papers are received, e.g., destroy the card if a dismissal order is received, refile for another review if a dismissal order is not filed.

10. HEARING/TRIAL

The clerk's basic recordkeeping responsibility for all court hearings and trials is the same. It consists of the taking of concise minutes of the proceeding, updating the court record card, and filing the minutes and case papers received during the hearing in the case folder. (Clerk responsibilities for keeping trial

records such as exhibits, juror attendance, and audio recording are not covered here. These duties should be performed in accordance with established practice.)

- 10.1 Take minutes in longhand.
- 10.2 Review the minutes for any actions required for calendaring, next action date or review dates.
- 10.3 If the judge orders a presentence investigation, fill out the presentence investigation order and notice of sentencing form setting a sentencing date. Enter the date on the calendar card and calendar book and move the card to that date in the future action tub file.
- 10.4 If a next appearance or action date is given, prepare and distribute in the courtroom the four-part notice form.



- 10.5 Update the court record card including entry of the next action date and return to the tub file.
- 10.6 File the calendar card under the next action date in the future action file.
- 10.7 File minutes and other case documents received during the hearing in the case folder.

11. RECEIPT AND ENTRY OF CLOSING ORDERS

A criminal case is ready for closing procedures when a judgment order, dismissal order or other closing order is signed by an appropriate person.

- 11.1 Prepare or review the closing order and date stamp.

- 11.2 Enter the disposition information on the court record.
- 11.3 Read the closing order to determine the agencies that should be sent a certified copy and distribute.

12. CASE CLOSING

Case closing activity is performed after the disposition of the case to allow for the expiration of the appeal period. Case closing eliminates from the case folder all documents which are not official case papers so that only essential case documents are retained for long term storage.

- 12.1 When the review date in the calendar card tickler file is reached, pull the case folder and separate documents contained in the case folder which are marked "Filed" from "received" documents.
- 12.2 Dispose of all "received" documents.
- 12.3 Dispose of all duplicate copies of documents contained in the case folder, retaining only one copy of each document.
- 12.4 Remove all staples, paper clips and colored backing sheets.
- 12.5 Place all remaining documents marked "Filed" in chronological order, so that the most recently filed document is on top.
- 12.6 Put the "Filed" documents into the case folder fastener.
- 12.7 File case folder by case number.
- 12.8 File calendar card in case folder.

13. SEARCH WARRANTS

Search warrants are filed with the court after execution to form a record of search warrants issued. They may be ordered sealed to protect the name of informants.

- 13.1 Time stamp the search warrant.
- 13.2 File the warrant and any supporting documents in the search warrants folder by date of issuance. If the warrant is ordered sealed, seal the warrant and file apart from other warrants.
- 13.3 If a complaint is filed, move the warrant to the case folder and process as any other filed case paper.

14. EXPUNGEMENT

An expungement is a legal procedure whereby a person with a record of criminal conviction in a misdemeanor case may have that record set aside. Upon the entry of an order of expungement, all official records and proceedings of the convicted person are deemed to have never occurred. Expungement motions should be heard by the judge who heard the case. If the judge who heard the case is unavailable, the expungement motion should be calendared in criminal court.

- 14.1 Receive and file stamp the order setting aside conviction.
- 14.2 Enter the order into the court record card.
- 14.3 Pull the index card on the case, or take out the defendant's name and case number from the index. If the case index is on roll film, remove the entry from the roll.
- 14.4 Obtain the case folder. If the case is on microfilm or microfiche, it should be deleted or separated from other cases.
- 14.5 Destroy all case documents and any microfilm or microfiche.
- 14.6 Leave the empty file folder in case number sequence with "expunged" stamped on it.

15. DISPOSITION OF AN OUTSTANDING WARRANT

The following procedure is outlined to ensure that all records of warrants or suspensions are erased after dismissal or apprehension of the defendant.

- 15.1 Upon formal dismissal or apprehension of the defendant, pull the calendar card from the integrated warrant/suspension file and pull the citation from the annual warrant file.
- 15.2 Update the court record as to the date and reason for recall.
- 15.3 Notify the responsible agencies (police, sheriff, state patrol) and request that the warrant order be returned to the clerk of courts' office within 24 hours. (Notification can be done in accordance with local procedure. Written notice may be necessary.)
- 15.4 Indicate the agency and the date the warrant order was returned on the court copy of the warrant. Destroy all returned copies of the warrant.
- 15.5 Continue the process according to the procedures described above for Hearing/Trial and Case Disposition.

16. POST-CONVICTION JUDGMENT ACTION

In some cases a person convicted of a crime may file a petition for post-conviction relief. This relief might include release, new trial, modification of sentence and supplementary orders concerning rearraignment, retrial, custody and bail. Such petitions are generally based upon some unlawfulness of a conviction or proceedings upon which it was based.

- 16.1 Receive and file stamp the petition and any attached papers and file in the existing case folder.
- 16.2 Process the action in accordance with procedures described above for calendaring, monitoring, hearing/trial and disposition.

17. TIME TO PAY

In some cases, the judge will allow the defendant a period of time to pay a fine, restitution, or other cost. See Accounting Procedures for detailed instructions.

TRAFFIC AND NON-TRAFFIC ORDINANCE VIOLATION PROCEDURE

A. INTRODUCTION

The traffic process includes only those actions which are considered non-criminal offenses. It includes a number of significant changes from the traditional recordkeeping practices. The key elements are outlined in the following:

1. A streamlined recordkeeping procedure for routine traffic cases.

Experience has shown that the majority of traffic and non-traffic ordinance violation offenses could be satisfied by the defendant stipulating to a plea of guilty and paying the forfeiture. Accurate and retrievable records must be kept of these transactions, but the creation of formal case dockets, indices and other case records for these routine occurrences is not necessary. Only when a case is contested by a plea of not guilty will the formal procedures of assigning a case number, creating a court record card, and a calendar card be required. In the routine cases which are satisfied by a stipulation of a plea of guilty or payment of the fine prior to the return date or by a plea of guilty on the return date, the entire record of the matter will be kept on the back of the original copy of the citation.

2. A new court record card is used for contested cases.

The new traffic court record card measures approximately 4 1/2" x 8 1/2" and will replace the traditional docket book or legal size court record. The clerk will only have to type basic case information once to create the court record, and a calendar card.

3. Descriptive files are used for quick retrieval of all traffic cases filed.

The Appearance Date File includes the original citation for cases awaiting initial appearance and calendar cards for contested cases scheduled for a hearing after the initial appearance. The citations and calendar cards are filed by the next appearance date. This file is monitored on a daily basis to insure that appearances take place as scheduled.

An Annual Warrant Suspension File will be maintained for those cases in which a warrant or suspension has been issued. When a warrant or suspension is issued, the case file is placed in alphabetical order in the annual warrant suspension file within the year of issuance. It is suggested warrants or suspensions active over two years be reviewed by the prosecuting attorney for possible dismissal.

The Disposed Alpha File is an alphabetic index by defendant name of all cases disposed within a given year. The disposed alpha file will contain calendar cards for contested cases and the white copy of the citation in uncontested cases.

A primary objective of the model system is to process uncontested traffic and non-traffic forfeiture cases without creating new paperwork. To do this, it is necessary that both the citation be filed with the court within 24 hours of issuance.

4. A new filing statistics worksheet will log the number of cases received for each agency daily.

When each agency files traffic citations with the court, the number of filings will be annotated on this log or worksheet. Management information which can be gained from various analyses of this information can be very helpful in projecting peaks and valleys in the workload.

5. Traffic cases will be processed for disposition upon receipt of a fine payment.

The clerk's workload will be substantially reduced by establishing procedures which simplify traffic accounting. Monies received in connection with a traffic or non-traffic forfeiture citation, in non-mandatory appearance cases, prior to the return date or in uncontested cases after the return date will be receipted as the fine payment. In those cases when the defendant subsequently appears and enters a not guilty plea the accounting system provides a method for transferring those funds to a bail account, if necessary, with a simple bookkeeping transaction.

6. Cases are always scheduled for next action or review date.

No case is allowed to be without a next appearance or review date. This principle assures constant court control of all cases and gives a monitoring element basic to good records management.

In the model system the original copy of the citation for uncontested cases and calendar cards for contested cases will be filed in the appearance date file by the next action date. The monitoring of this tickler file will prevent cases from becoming "lost" in the system.

7. A clear plastic sleeve will be used as the case file.

Legal size case folders and/or jacket will be replaced by clear plastic sleeves, which will eliminate file folder preparation and minimize necessary storage space. Plastic sleeves are recommended for those cases in which a number of documents have been filed in addition to the citation (e.g., in contested cases).

B. PROCEDURE

1. CASE INITIATION

The action is commenced by an initiating document (Uniform Traffic Citation and Complaint). The date of the first appearance is determined by the arresting agency, using time periods allocated by the court. At times, when the defendant is in custody, the complaint/citation will not be filed prior to the first appearance. If so, the case will be opened at that time.

- 1.1 Receive citation/complaint. You should receive the citation/complaint within 24 hours of issuance.
- 1.2 Carry out quality review procedures as follows:
 - (a) Check for the following information elements necessary to complete the case initiation: 1) defendant's name; 2) address; 3) birth date, check for determination of juvenile status: traffic offenders under age 16; 4) the offense alleged, including the section number and description of the offense; 5) the date, time and location of the initial appearance.
 - (b) If the date of birth indicates a person is under 16 years of age, transfer the citation to juvenile.
 - (c) If a representative of the agency is present, bring the problem to his or her attention. If the problem is noticed when the filing agency or party is not present, follow through with action to obtain the necessary information in accordance with local procedure.
- 1.3 Receive and attach documents to the white copy of the citation. Along with the two copies of the citation, you may receive:
 - A deposit of money with arresting agency's receipt, if cash.

(In mandatory appearance cases, it is a deposit; non-mandatory appearance cases, it is the forfeiture payment.)
 - A deposit of a valid drivers license.
 - A signed stipulation accompanied by the fine payment.
 - An arrest bond certificate.
- 1.4 Write one receipt for all fine payments or deposits received from an issuing agency.
- 1.5 File stamp the original citation and any subsequent documents.
- 1.6 Check for outstanding warrants. If a warrant is found, indicate (by stapling a note to the citation) that a warrant is outstanding.

- 1.7 Place the original copy of the citation and attachments in the appearance date file by date and time of appearance.
- 1.8 Place a tally mark on the filing statistic worksheet under the appropriate filing agency.

2. RECEIPT OF FORFEITURES

When a payment of a forfeiture is received by the clerks office prior to return date, the citation should be separated in the appearance date file from those citations in which the defendant actually is expected to appear. This will expedite calendar preparation and case disposition processing.

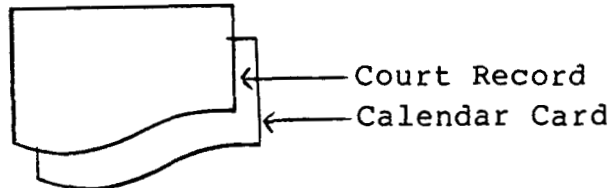
- 2.1 Receive forfeiture and issue receipt.
- 2.2 File stamp defendant's citation copy, if received.
- 2.3 Pull the court copy of the citation from the appearance date file.
- 2.4 Review citation for mandatory appearance. If appearance is required, refile the citation in the appearance date file.
- 2.5 If no appearance is necessary, immediately process the citation. See Section 12 (Case Disposition Procedure).
- 2.6 File the processed citation in the disposed alpha file.

3. NOT GUILTY PLEA BY MAIL

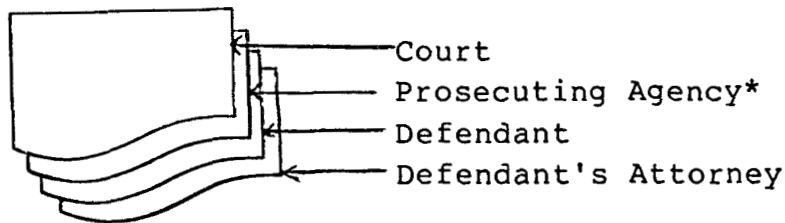
Letters entering a plea of not guilty received by the clerk of courts' office prior to initial appearance (return date) should be handled administratively upon receipt.

- 3.1 File stamp letter entering plea.
- 3.2 Retrieve the citation from the appearance date file.
- 3.3 Assign the next consecutive traffic case number.

- 3.4 Assign the next action date for pre-trial or trial in accordance with local procedure.
- 3.5 Create a two-part traffic court record card. Enter the basic case information on the top portion of the record card form and enter the filing of the complaint, other documents and the next action date on the lower portion of the form.



- 3.6 Prepare and distribute the notice (defendant by mail).



* Prosecuting agency to inform arresting agency.

- 3.7 Detach the calendar card, enter the next action date, place in the appearance date file under the next action date.
- 3.8 Place the court record, citation and other documents in the plastic sleeve; file by case number.

4. RECEIPT AND ENTRY OF SUBSEQUENT PAPERS

Once a traffic citation has been filed, other papers called subsequent papers are received periodically to be entered and filed with the case file. These papers may be filed in person by the parties, received through the mail or received directly in the courtroom. Separate processes have been outlined for high volume occurrences. (See Step 2, Receipt of Stipulated Forfeitures and Step 3, Receipt of Not Guilty Pleas by Mail.)

- 4.1 Receive and file stamp the first page of the subsequent paper.

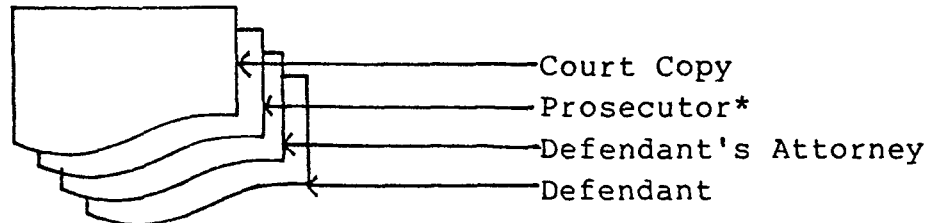
- 4.2 Enter the date and paper title onto the court record card (if contested) or white copy of the citation (if uncontested).
- 4.3 File subsequent papers with the citation by stapling the papers to the citation or using a plastic sleeve file.
5. PREPARATION FOR INITIAL APPEARANCE (RETURN DATE) HEARING

Preparation for the initial appearance (return date) consists of preparing a calendar and pulling the unsatisfied citations from the appearance date file.

 - 5.1 Prepare the calendar for the initial appearance hearings by pulling the citations for all cases which have not yet been satisfied by a paid forfeiture.
 - 5.2 Type a court calendar reflecting basic case information.
 - 5.3 Distribute calendars.
 - 5.4 Refile the citation copies in the appearance date file.
6. INITIAL APPEARANCE HEARING (RETURN DATE)

At initial appearance (return date) the defendant may appear before the court to enter a plea, request a trial, or ask for an extension of "time to pay". If the defendant fails to appear in person or by mail, the court may find the defendant guilty in absentia. In the event the defendant exercises his right to appear on the return date and change his plea, it will be necessary to pull out the citation and take appropriate action. (See Step 7, Actions to be Taken After Initial Appearance.) An immediate hearing may be granted at initial appearance. If so, see Step 11 (Hearing/Trial).

- 6.1 Take minutes on the courtroom clerk calendar. Mark appearance status and brief notes as to disposition.
- 6.2 For cases continued or scheduled for another court appearance, give the parties verbal notice or hand-written notice of the next appearance



*Prosecuting agency to inform arresting agency of next action date.

7. ACTIONS TO BE TAKEN AFTER INITIAL APPEARANCE (RETURN DATE)

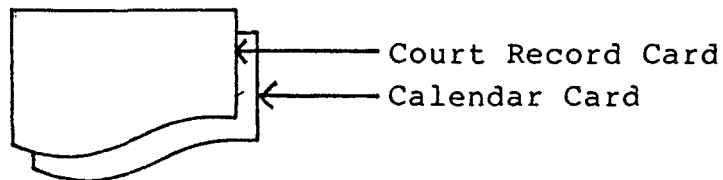
Different steps will have to be taken by the clerk depending on the results of the initial appearance. Using the initial appearance calendar, follow the appropriate alternative procedure described below.

- 7.1 If the case is disposed through a guilty plea, no contest plea, dismissal or default judgment, go to Step 12 (Case Disposition).
- 7.2 If the case is continued to a new initial appearance date, but is not contested, use the following procedure:
 - (a) Place continuance information on the back side of the white citation. Refile in the appearance date file under the new action date.
 - (b) Place new appearance date on the yellow copy of the citation. Refile in pending alpha file.

NOTE: Place an asterisk next to the original court date and place the new court date on the back side next to judge number. Be careful not to mark up the face of this copy.

- 7.3 If a warrant is issued in a traffic case for the defendant's arrest, use the following procedure:
 - (a) Prepare a card and file it in the warrant/suspension file alphabetically.

- (b) Attach the citation to other case documents and file alphabetically in the annual outstanding warrant file.
- 7.4 If the case is contested (not guilty plea entered), use the following procedure:
- (a) Assign the next consecutive traffic case number.
 - (b) Create a court record card. Enter the basic case information on the top portion of the court record card and enter the filing of the citation and other documents and next action date on the lower portion of the form. (See Form No. TR 300 in Forms Manual for detailed instructions.)



- (c) Detach and update the calendar card with the next action date and file in the appearance file by date and time of appearance.
- (d) Place the court record card, citation and miscellaneous papers in a plastic sleeve; file by case number.

8. ADJOURNMENTS

At any time during the processing of a contested case, a hearing or activity may be cancelled (adjourned) on request of a party or the court and rescheduled for a new date. Clerk responsibilities as a result of an adjournment include updating the court record card, or back side of the white citation copy, and moving the calendar card to a new date.

- 8.1 Receive notice and approval of adjournment.
- 8.2 Reschedule or receive notice of the new hearing or review date.
- 8.3 Pull the citation; note the adjournment and new hearing or review date on the court record card; refile in case number order.
- 8.4 File the calendar card under the new hearing or review date in the appearance date file.

8.5 Note the new date on the calendar book or calendar worksheet in accordance with local procedures.

9. CALENDARING OF SUBSEQUENT CONTESTED CASE HEARINGS

The court is responsible for calendaring the activities of traffic cases as they proceed through the court system. In contested cases, these activities may include a subsequent return appearance hearing, pre-trial and motion hearings, trial and post-trial hearings. For each of these types of hearings, certain basic procedures apply. The same procedures apply whether the calendar prepared is a daily, weekly or monthly calendar. But a distinction is made between contested and uncontested cases. Only "contested" cases require a case number and court record card.

9.1 In advance of hearing, prepare the court calendar by pulling the calendar cards filed under the appropriate hearing date or by referring to the calendar book or calendar worksheet.

9.2 Type and distribute the calendar in accordance with local procedure.

9.3 Using the calendar, pull the citation(s) and bring or send to courtroom for use during the hearing.

10. CASE MONITORING

Case monitoring consists of the regular checking of the appearance date file to identify cases in which a scheduled activity appears not to have occurred and to determine what necessary follow-up action should be taken.

10.1 Each day, check the appearance date file for calendar cards which remain filed under the previous day in the appearance file.

10.2 If the event scheduled for the previous day was a hearing, determine if no appearance was made or if the clerk's office was not notified of the results of that hearing.

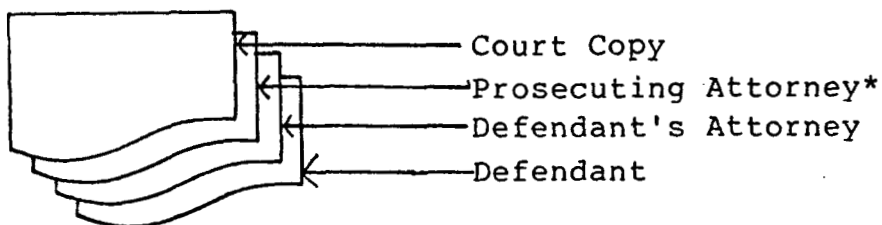
- (a) If no appearance was made, notify the trial judge to determine action to be taken.
- (b) If an appearance was made, determine the results of the event including the date of next action; move the calendar card in the appearance file to the date of the next action; update the calendar book or calendar worksheet and the court record card.

11. HEARING/TRIAL

The clerk's basic recordkeeping responsibility for all court hearings and trials is the same. It consists of the taking of concise minutes of the proceeding, updating the citation or court record card, and filing the minutes and case papers received during the hearing in the case sleeve. (Clerk responsibilities for keeping trial records such as exhibits and juror attendance are not covered by the model system. These duties should be performed in accordance with local procedures.)

11.1 Take minutes in longhand.

11.2 If a next appearance or action date is given, prepare and distribute in the courtroom the four-part notice form. (See Form No. CR 202 in Forms Manual for detailed instructions.)



*Prosecuting agency to inform arresting agency of next action date.

- 11.3 After court, review the minutes for any actions required for calendaring, next action date or review dates.
- 11.4 Update the court record card including entry of the next action date, if appropriate. If the case was completed, go to Step 12 (Case Disposition).
- 11.5 File minutes, court record card, and other case documents received during the hearing in the plastic sleeve, and file by case number.
- 11.6 File the calendar card under the next action date in the appearance date file.
- 11.7 Send the copy of minutes (Form No. TR 302.1) to WCIS.

12. CASE DISPOSITION

Whether the traffic matter is contested or uncontested, the defendant found guilty or not guilty, the basic disposition procedure is the same.

- 12.1 Send a copy of court minutes or initial appearance calendar for cases disposed at initial appearance to clerk's employee(s) responsible for disbursement of money held as bail and for disbursement of forfeitures received. (See Accounting Procedure later in this manual.)

- 12.2 Update calendar book and calendar card if a review date is scheduled.

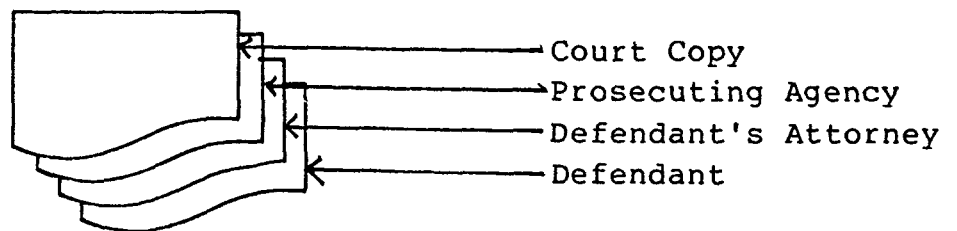
Hearings relating to judicial review will be considered under post-judgment activity. (See Step 14 below.)

- 12.3 Update court record card (if contested) or citation (if uncontested), listing date and title of final orders. Also, note location of exhibits filed separately from case file. Refile the calendar card or citation copy in the appearance file under the appropriate date and time if review date is scheduled.
- 12.4 Remove all staples, paper clips and rubber bands from case related papers.
- 12.5 File disposed uncontested cases and the calendar cards for contested cases alphabetically by year, in the disposed alpha file.
- 12.6 File disposed contested cases by case number.

13. POST-JUDGMENT

A number of clerk and judicial activities can be involved after a case is closed (i.e., judicial disposition reviews, motions to reopen, etc.). The following describes the general procedures to be used when the post-judgment activity is initiated using the original case documents (citation, court record card and calendar card.) If a motion to reopen is granted in a previously uncontested case, follow Step 3 to create court record card.

- 13.1 Receive and file stamp initiating papers.
- 13.2 Pull case file (citation or plastic sleeve), and insert an outfolder in its place.
- 13.3 Schedule court activity in accordance with local procedures.
- 13.4 Prepare four-part notice form. (See Form No. CR 202 in Forms Manual for detailed instructions.)



- 13.5 Update the court record card or back of citation as to papers filed and enter next action date.
- 13.6 Enter next action date on the calendar card and file in the appearance date file by appearance date and time of appearance. If the case was not originally contested, file the citation in the appearance file under the date and time of appearance.
- 13.7 Note appearance date and time on calendar book or calendar worksheet in accordance with local procedures.
- 13.8 Continue the process according to procedures described above for Receipt and Entry of Subsequent Papers, Adjournments, Case Monitoring, Hearing/Trial and appropriate Case Disposition steps.

SPECIAL PROCEDURES

Certain legal events, if they occur in a case, entail clerical procedures which are specialized. These procedures are outlined in the following:

14. DISPOSITION OF AN OUTSTANDING WARRANT

The following procedure is outlined to ensure that all records of warrants or suspensions are erased after dismissal or apprehension of the defendant.

- 14.1 Upon formal dismissal or apprehension of the defendant, pull the calendar card from the integrated warrant/suspension file and pull the citation from the annual warrant file.
- 14.2 Update the court record as to the date and reason for recall.
- 14.3 Notify the responsible agencies (police, sheriff, state patrol) and request that the warrant order be returned to the clerk of courts' office within 24 hours. (Notification can be done in accordance with local procedure. Written notice may be necessary.)
- 14.4 Indicate the agency and the date the warrant order was returned on the court copy of the warrant. Destroy all returned copies of the warrant.
- 14.5 Continue the process according to the procedures described above for Hearing/Trial and Case Disposition.

ESTATE PROCEDURE

A. INTRODUCTION

The model recordkeeping system designed for estate (formal and informal) case processing incorporates several changes from traditional recordkeeping practices. The key elements are outlined in the following.

1. A revised multi-part court record card is used

A revised court record card has been designed for the model system. A clerk will only have to type basic case initiation information once to create the court record, index card, calendar card, and WCIS filing and disposition reports.

The court record will be the exclusive case history record. A number of courts now use records other than the court record to keep case history information. For example, some courts use worksheets as an additional record of papers filed.

Preprinted docket entries on the court record card allow for handwritten, as opposed to typewritten, entries of dates and types of papers filed. The index card will be filed in true alphabetical order and will replace the semi-alphabetic index books now used in some courts.

2. Cases are always scheduled for a next action or review date. A tickler file is used to monitor these scheduled dates.

One of the basic principles of the model system is that no case is allowed to be without a next appearance or review date. This principle assures constant court control of the case and gives a monitoring element basic to good records management. Some changes in current practice will be required. For example, currently many courts do not monitor the statutory time restrictions for the filing of claims, or wait for notification from the attorneys that some hearing should be scheduled. In the model system, a next action date for the next court appearance or a review date always will be set to ensure that the case is reviewed on a regular basis until it is ultimately disposed. The scheduling of next action dates and the setting of review dates are a matter of local policy. However, the model system does suggest time frames for some review activities.

The calendar card, which also is created at case initiation as part of the multi-part court record, is the control record in the model system. The calendar card always is filed in a tickler by the next action date, which may be a date for a court appearance or a review of the file to determine the next step. The tickler file represents a simple manual system for monitoring the status of each case throughout its active life. Use of the calendar card will prevent cases from becoming "lost" in the system. Calendar cards also enable registers to dispose of cases in a timely manner.

B. PROCEDURE

1. CASE INITIATION

An estate action commences with the filing of a petition for administration in a formal proceeding or an application for informal administration in an informal proceeding. If the decedent is testate, the original will is also filed at the time the action begins.

- 1.1 Receive initiating papers: petition or application, will (if testate), and order for hearing (formal only), or waivers and consents.
- 1.2 Perform quality review check. Date stamp and, if appropriate, stamp "Filed" on the first page of each document.

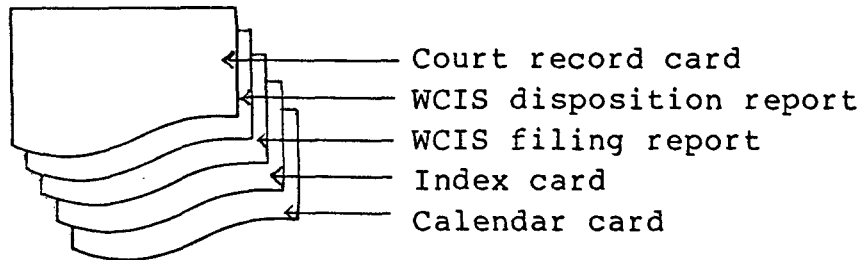
Register in probate has authority to reject non-uniform or illegible papers. [§ 879.47]

- 1.3 Check that no formal administration proceedings have been started if an informal application has been filed. If affirmative, proceed in accordance with section 865.07(1)-(2).
- 1.4 Assign or verify date on order for hearing in formal administration in accordance with local calendaring practices.
- 1.5 Determine bond requirements.

Judge or register in probate may require bond in an amount commensurate with the size of the estate. [§ 856.25]

- 1.6 Determine if guardian ad litem is required. If yes, appoint according to local practice.
- 1.7 Assign a case number by pulling the next available prenumbered case folder. Case number format is in accordance with WCIS case numbering procedure. (See Appendix C, WCIS reporting manual for details.)

- 1.8 Create court record card. Enter basic case information on the top portion of court record form; checkoff the filing of initiating documents and enter dates on the pre-printed docket area. (See Form No. PR 801 in Forms Manual for detailed instructions.)



- 1.9 Detach and send the goldenrod (filing) reporting form to WCIS.
- 1.10 Update the court record card and note the final date for filing of claims in a formal proceeding. [§ 859.05]
- 1.11 File index card in alphabetical order by last name of the decedent. Check the index file for the existence of a will held for safekeeping. If a will is found, open and notify the attorney and/or executor and file the will along with the other papers in the case folder. [§ 856.03]
- 1.12 File calendar card in the tickler file either by the next hearing date (if a hearing is scheduled) or by the review date (final date for filing of claims). In an informal estate, the review date is 18 months from the date of filing. In a formal estate there will be a hearing date scheduled.
- 1.13 If the petition was not filed in person, notify attorney or personal representative by postcard (within 5 working days) of the case number assigned.
2. APPOINTMENT OF PERSONAL REPRESENTATIVE

The appointment of a personal representative is a mandatory step in both formal and informal estate proceedings.

This party, either named in the will or appointed by the register in probate or by the court must meet specific qualifications and is then charged with the responsibility of settling the estate in a timely fashion. This party receives authority to act on behalf of the estate through the issuance of domiciliary letters by the court.

- 2.1 Receive and file stamp jurisdictional papers, either waivers or affidavit of mailing and proof of publication.
- 2.2 Perform quality review procedure.
 - (a) Check waiver or affidavit of mailing against petition to verify that all interested parties have been properly notified.
 - (b) Obtain appropriate signatures as required on order admitting will and order for administration. A statement of acceptance is also filed by the personal representative in an informal proceeding or oath in a formal proceeding.
 - (c) Determine sufficiency of bond, if it was required. [§ 857.01]
- 2.3 Issue domiciliary letters to the personal representative.
- 2.4 Report issuance of letters to WCIS on the case transaction form.

3. CREATION OF TRUSTS

If the estate calls for a trust to be created, letters of trust are issued to the trustee at the same time as the domiciliary letters are issued. [§ 856.29]

- 3.1 Issue letters of trust, signed by the judge in a formal proceeding or by the probate register in an informal proceeding.
- 3.2 Create a trust accounting card. (See Form No. PR 805 in the Forms Manual for detailed instructions.)

3.3 Assign a case number to the trust by adding an alpha identifier to the estate case number in accordance with WCIS case numbering procedures.

3.4 Send filing/status copy to WCIS.

3.5 File trust accounting card in alphabetical order by last name of the trustee in accordance with Step 10 (Annual Accounting Procedure).

4. RECEIPT AND ENTRY OF SUBSEQUENT DOCUMENTS

Once the initiating documents have been filed, other papers called subsequent papers are received periodically to be entered on the court record card and filed in the case folder. These papers may be filed in person by the parties, received through the mail, or received directly in the courtroom.

4.1 Accept, date stamp and, if appropriate, stamp "Filed" on first page of the subsequent papers.

4.2 Write in long hand the date received on the appropriate line in the pre-printed docket area.

4.3 Take other action as appropriate which may be indicated in the content of the papers.

4.4 Return the court record card to the tub file.

4.5 File the documents in the case folder.

5. CALENDARING OF SUBSEQUENT HEARINGS

The court is responsible for calendaring activities which require a court hearing as the case proceeds. In formal estates these activities may include any hearings on contested matters, hearings on claims, trials, and post-disposition hearings. The same procedures apply whether the calendar prepared is a daily, weekly, or

monthly calendar. If no court hearing is scheduled, the calendar card remains filed in accordance with prescribed deadline date for filing of general inventory (Step 7.3) or closing of the estate (Step 7.4).

- 5.1 In advance of the hearing, prepare the calendar by pulling the calendar cards filed under the appropriate hearing date or by referring to the calendar book or calendar worksheet.
- 5.2 Type and distribute the calendar in accordance with local procedure.
- 5.3 Using the calendar, pull case folder(s) and bring or send to courtroom for use during the hearing.

6. FILING OF GENERAL INVENTORY

In a formal estate proceeding, a general inventory of all property owned by the decedent showing the value of such property as of the date of the decedent's death, must be filed with the court by the personal representative no later than six months after the issuance of domiciliary letters. [§ 858.01] This period may be extended only through order of the court. The inventory allows the register in probate to establish the filing fee to be paid which is determined by statute by the size of the estate. [§ 851.74] (In an informal proceeding, where no general inventory is required, the filing fee is determined from the inheritance tax form which will be exhibited before the probate register. [§ 865.11])

- 6.1 Receive and receipt filing fee determined from the value of the estate on the inventory in accordance with section 851.74(1)(a).

- 6.2 File stamp the inventory and update the court record card.
- 6.3 Move the calendar card to the date which is 18 months from the filing of the petition to monitor timely closing of the estate. [§§ 863.33, 863.35]
- 6.4 Report the filing of the inventory to WCIS on the case transaction form.
- 6.5 File the inventory in the case folder.

7. CASE MONITORING

Case status reviews consist of the regular checking of the future action tub file (calendar card tickler system) to identify cases where a statutorily required or scheduled activity appears not to have occurred and to determine what necessary follow-up action should be taken.

- 7.1 Each day, check the tickler file for calendar cards which remain filed under the previous day in the tickler system.
- 7.2 Pull the court records for those cards which remain filed under the previous date to determine what action was to have occurred on the previous date.
- 7.3 If the event being monitored is the filing of the inventory within six months of the issuance of domiciliary letters, the register in probate should:
 - (a) Notify the attorney responsible of the missed deadline and request action within 10 days to either file the inventory or request an extension order from the court.
 - (b) If after 10 days, the inventory has not been filed nor an extension granted, the register in probate shall bring it to the attention of the judge who may issue an order to file the inventory under the provisions of section 858.05.

- 7.4 If the event being monitored is the timely completion of the estate within 18 months after filing [§ 863.35], the register in probate should:
- (a) Notify the attorney or personal representative of the missed deadline and request compliance or a request for an extension within 30 days.
 - (b) If the closing requirements are not met nor an extension granted within the 30 days, the register in probate should:
 - (1) If the proceeding is formal, notify the judge who may then issue an order to show cause and proceed under the provisions of section 857.09, or
 - (2) If the proceeding is informal, the Probate Register may order the personal representative to show cause why the estate has not been closed and proceed under the provisions of sections 863.35(2) and 865.01 et. seq.
- 7.5 If the event scheduled for the previous day was a hearing, determine if no appearance was made or if the register in probate's office was not notified of the results of that hearing.
- (a) If no appearance was made, notify the assigned judge to determine action to be taken.
 - (b) If an appearance was made, determine the results of the event including the date of the next action; move the calendar card in the future action tub file to the date of the next action; update the calendar book or calendar worksheet and the court record card.
 - (c) If an adjournment was granted, move the calendar card in the future action tub file to the new date; update the calendar book or calendar worksheet and the court record card.

8. HEARING/TRIAL

The register's basic recordkeeping responsibility for all court hearings and trials is the same. It consists of taking (or receiving from court reporter or other staff) concise minutes of the proceeding, updating the court record card, and filing the minutes and case papers received during the hearing in the case folder.

- 8.1 Take minutes in longhand on WCIS probate minute form. [§ 851.72(3)] Send tear-off copy of minutes to WCIS.
- 8.2 If a next action (or review) date is given, update the court record card including entry of the next action date and return to tub file.
- 8.3 File the calendar card under the next action date in the future action tub file.
- 8.4 File minutes and other case documents received during the hearing in the case folder.

9. CASE DISPOSITION

The statutes which govern probate procedures set forth some specific requirements for the closing of an estate. All conditions must be met and all issues settled. A formal estate is closed with a final judgment, whereas an informal estate is closed with the personal representative's statement to close estate.

9.1 Closing a Formal Estate [Chapter 863]

- (a) Receive final account; file stamp.
- (b) Review final account for consistency between final accounting and inventory, that all expenses have been paid and that the attorney fees are reasonable. If any discrepancy is noted, notify attorney.

- (c) If statutory time has run out, but estate cannot be closed:
- (1) Issue order extending time.
 - (2) Report the order to WCIS on case transaction form.
 - (3) Move calendar card to end of period.
(Follow case monitoring procedures described in Step 7 above.)
- (d) Check file to make sure that the following papers have been received:
- Order for hearing on final account and proof of publication or waiver and consent.
 - Certificate determining inheritance tax.
 - Closing certificate for fiduciary.
 - Proof of heirship.
 - Judgment on claims.
 - Satisfaction on claims, if claims were filed. If any are missing notify attorney and proceed as under Step 9.1 (c).
- (e) Check-off receipts on final accounting to verify. Return receipts to personal representative. (These should not become part of the case file).
- (f) Receive and file stamp final judgment.
- (g) Verify that assets on hand in final account equal assets disbursed in judgment and that the judgment follows the provisions of the will.
- (h) If trust was created, a trust inventory must be included.
- (1) Collect and receipt filing fee. [\$ 851.74]
 - (2) Transfer total of inventory to trust accounting card.
 - (3) File trust accounting according to Step 10 (Annual Accounting Procedure).
- (i) Give final judgment to judge for approval and signature.

- (j) Enter date of final judgment and check-off on pre-printed court record card.
- (k) Enter case disposition information on top of court record card and send green copy to WCIS.
- (l) Move calendar card to 120 days from date of signing of final judgment to monitor timely filing of receipts for disbursements as provided in section 863.41.
 - (1) As receipts are received, check-off against final judgment.
 - (2) If real estate is involved, verify that proof of recording from register of deeds has been filed. [§ 863.29]
- (m) If all receipts for disbursements are received and, if real estate was involved, proof of recording filed, the order for discharge of personal representative may be entered discharging the personal representative from further responsibilities and canceling bond. [§ 863.47] Discharge is not ordered where requirements are not met.
- (n) File calendar card in case folder.

9.2 Closing an Informal Estate [§ 865.16]

- (a) Receive, file stamp, and sign personal representative's statement to close estate.
- (b) Complete case disposition information on top of court record card and send green disposition copy to WCIS.
- (c) Move calendar card to 120 days after the date of signing of the closing statement for monitoring the filing of disbursement receipts as described in Step 9.1(1) above.
- (d) Move calendar card to six months after the statement to close was filed. At the end of this period, if no proceedings challenging the statement or otherwise involving the personal representative have been filed, the appointment is automatically discharged without further action. [§ 865.16(2)]

10. ANNUAL ACCOUNTING PROCEDURE

Once a trust has been created, requirements for annual accounting dictate that a record be created that will continue past the closing of the estate and which may last for many years. This record is to be maintained on the trust accounting card described in Step 3.2 below. There are two options for the date on which the annual accounting may be due. Annual accounts are due either by March 1 of each year or, if the register in probate in accordance with local practice prefers, on the anniversary date of the creation of the trust.

- 10.1 Trust accounting cards are filed alphabetically in a tub file. If the option selected is to require accountings on the anniversary date, a "calendar card" created as a by-product of the trust accounting record card, can be used for monitoring annual account filings by keeping the calendar card in due date order in a tickler file.

If anniversary date accounting is used, notice may be sent 30 days in advance or on an exception basis. If notice is to be sent to all trustees, calendar cards should be filed in the tickler file 30 days in advance of the due date. This will alert the register to send the notice and copy of the annual accounting form one month prior to due date.

A plastic overlay form may be used with trust accounting card to create a notice form which will eliminate the need for typing each individual notice. (See Form No. PR 805 in the Forms Manual for suggested format.)

- 10.2 If the accounting due date is March 1, may send out notice form to non-institutional trustees informing them of due date along with a copy of the annual accounting form to be returned.

A plastic overlay form may be used with trust accounting card to create a notice form which will eliminate the need for typing each individual notice. (See Form No. PR 805 in the Forms Manual for suggested format.)

- 10.3 Receive and file stamp annual account.
- 10.4 Review for correctness in accordance with section 880.25(4). Check to make sure no improper disbursements have been made and verify that securities listed actually exist. (Trustee may be required to bring these in for personal inspection by the register in probate.) [§ 701.16(4)(a)]
- 10.5 Record annual accounting date and amount (balance on hand) on trust accounting record card and return to tub file.
- 10.6 Report annual accounting to WCIS on case transaction form.

11. CLOSING OF TRUST

A trust generally continues for a specific length of time. At the end of that time, a trust must be formally closed and trustee discharged to terminate the trust.

- 11.1 Receive, file stamp, and place in the case folder of the original estate the following papers:
 - Petition for termination of trust
 - Verified final account
 - Order for hearing and affidavit of mailing or waiver by interested parties
- 11.2 Update court record card.
- 11.3 Verify hearing date, if needed, for correctness in accordance with local calendaring practice.

- 11.4 Receive, file stamp, and place in the original estate case folder the following final papers:
- Affidavit of mailing
 - Closing certificate for fiduciaries
 - Order discharging trustee (signed by judge)
- 11.5 Update court record card.
- 11.6 Report final disposition of trust to WCIS on case transaction form.
- 11.7 File receipts for disbursement of trust in case folder.
- 11.8 File trust accounting card in original estate case folder.

12. CASE CLOSING PROCEDURE

Case folder closing activity is performed 120 days after the disposition of the case to allow for the expiration of the appeal period and for the filing of receipts. The purpose of the case folder closing procedure is to eliminate from the case folder all documents which are not official case papers so that only essential case documents are retained for long term storage and for possible microfilming.

- 12.1 When the 120 day review date in the future action tub file is reached, pull the case folder and remove "received" documents.
- 12.2 Dispose of all "received" documents as well as all unstamped informal notes and memos.
- 12.3 Dispose of all duplicate copies of documents contained in the case folder, retaining only one copy of each document.
- 12.4 Remove all staples, paper clips and colored backing sheets.

- 12.5 Place all remaining documents marked "Filed" in chronological order, so that the most recently filed document is on top.
- 12.6 Put the "Filed" documents into the case folder fastener.
- 12.7 File the calendar card in the case folder.
- 12.8 File case folder by case number.

13. SUMMARY PROCEDURES

In addition to formal and informal probate, there are several alternative probate procedures available to transfer the decedent's property. These alternatives are dependent on several factors including the value of the estate, location of assets, forms of ownership, and the numbers and relationships of heirs and beneficiaries. An estate proceeding may be started using one form and concluded in another provided the required statutory conditions are met, e.g., a formal proceeding may be terminated as a summary settlement or vice versa.

13.1 Formal Termination of Joint Tenancy, Termination of Life Estate

These procedures are commenced with the filing of a petition for certificate of termination of joint tenancy or a petition for certificate of termination of life estate when the interest of the decedent in the property was under one of those arrangements. The court, after receiving proof that all death taxes have been paid, may then issue the appropriate certificate which terminates the decedent's interest and passes it on to the survivors. These procedures generally involves little in the way of case monitoring as this concludes quickly and there are not time constraints set by statute.

- (a) Receive initiating papers and create court record card as in Step 1, Case Initiation. There are no bond nor noticing requirements for these procedures. File calendar card by hearing date assigned.

- (b) There may be a hearing on the matter. Follow those procedures in Step 8, Hearing/Trial.
- (c) The case is closed when the Certificate of Termination of Joint Tenancy or Certificate of Termination of Life Estate are signed by the judge. If real estate is involved, a certified copy of the certificate is issued to be filed with the Register of Deeds.
- (d) Follow Step 12, Case Closing Procedure, 120 days after the disposition of the case.

13.2 Summary Settlement

If an estate meets requirements of section 867.01(1) (a) or (b), it may be summarily settled without the appointment of a personal representative. The system was designed for a relatively small estate to be quickly assigned to a surviving spouse and/or minor children or when the debts of the decedent exceed the assets and there is nothing to distribute to the heirs. No notice to creditors is given and no claims are filed. If there is a will, it may be ignored.

- (a) Receive the initiating papers including petition for summary settlement and, if required by the court, order for hearing and notice; assign hearing date; and create court record card as in Step 1, Case Initiation. Bond may be required of the petitioner.
- (b) Follow procedure for hearing in Step 8 if hearing is to be held.
- (c) The court, upon receiving the certificate determining inheritance tax and notice that it has been paid, if due, and finding that the estate is one proper to be settled under this procedure, may assign the property with an order of summary settlement which disposes of the case.
- (d) Follow case closing procedures in Step 12.

13.3 Summary Assignment

If an estate meets the requirements of section 867.02, the court may summarily assign the property subject to the claims of creditors. This is basically designed to be a quick method of settling estates much like the summary settlement for up to \$10,000 of solely owned property. The two major differences are: (1) notice to

creditors is required, and (2) it is designed to be used by all heirs, regardless of relationship, i.e., other than a spouse and/or minor children of the deceased. As in the other summary procedures, no personal representative is appointed.

- (a) Receive initiating papers including: petition for summary assignment; summary assignment; order for hearing and notice, or summary assignment notice to creditors. Create a court record card and assign hearing date as in Step 1, Case Initiation. Hearing date must be at least 30 days after date of publication of notice.
- (b) Follow Step 8 for hearing procedure.
- (c) If the court is satisfied that the estate is one proper to be settled with this procedure and upon receipt of the certificate determining inheritance tax and proof of payment, if due, it may find and order for summary assignment, which assigns the property to the creditors and persons interested who are entitled to the same. This disposes of the case.
- (d) Follow case closing procedures as described in Step 12.

14. SPECIAL ADMINISTRATION

Whenever it appears by petition to the court that a person has died and the court would have jurisdiction for the administration of the person's estate, the court may appoint a special administrator under certain circumstances set forth in section 867.07. The special administrator acts in the absence of a personal representative upon authority of letter of special administrator with or without hearing or notice. The special administrator may be required to furnish bond or may have the same powers, duties and liabilities as a personal representative or only those specifically granted to him by the court. The special administrator is discharged when the court is satisfied he has properly performed his duties or upon the granting of letters to a personal representative.

The special administrator may be required to file accounts or reports as determined by the court prior to discharge.

14.1 If petition for appointment of special administrator is filed involving an estate proceeding previously filed with the court, all filings of papers and hearings held are handled as in Step 4, Receipt and Entry of Subsequent Documents and Step 5, Calendaring of Subsequent Hearings.

14.2 If a petition for appointment of a special administrator is filed as the initiating documentation in an estate proceeding, follow procedures as in Step 1, Case Initiation. The action will generally become another of the probate proceedings, in which case the procedures described for that type will apply. If the case begins and ends with nothing other than a special administration, follow case disposition procedures applicable in Step 9 and case closing procedures in Step 12 after special administrator is discharged.

15. WILLS FOR SAFEKEEPING

Section 853.09 provides that a person may deposit his or her will for safekeeping with the register in probate of the county where he or she resides. The will is sealed in an envelope with the name and address of the testator and the date of deposit noted on the envelope. The register in probate is required to issue a receipt for the will and maintain a registry of all wills deposited. The will, unless withdrawn according to section 853.09(3), or opened after the death of the testator in accordance with section 856.03, must be kept on file for a period of 25 years from the date of deposit. Thereafter, it may be microfilmed for confidential records storage purposes and the original destroyed.

15.1 Receive will in sealed envelope and note name, address and date of deposit. Collect the fee and issue receipt.

- 15.2 Fill out index card for wills held for safekeeping, including name, address, and date of deposit. File the index card in the general index file.
- 15.3 File the will in chronological order in wills held for safekeeping drawer.
- 15.4 If will is withdrawn, pull index card and note withdrawn and date of withdrawal and person, if other than the testator, and return to file. Give sealed will to the testator or authorized party.
- 15.5 As storage needs dictate, wills held for more than 25 years may be microfilmed in accordance with section 853.09(2). Note the microfilm location on the index card.

GUARDIANSHIP PROCEDURE

A. INTRODUCTION

The model recordkeeping system designed for guardianship case processing incorporates several changes from traditional recordkeeping practices. The key elements are outlined in the following.

1. A revised multi-part court record card is used.

A revised court record card has been designed for the model system. A clerk will only have to type basic case initiation information once to create the court record, index card, calendar card, and WCIS filing and disposition reports in a single impression.

The court record card will be the exclusive case history record. A number of courts now use records other than the court record to keep case history information. For example, some courts use worksheets as an additional record of papers filed.

Preprinted docket entries on the court record card allow for handwritten, as opposed to type-written, entries of dates and types of papers filed. The index card will be filed in true alphabetical order and is intended to replace the semi-alphabetic index books now used in some courts.

2. Cases are always scheduled for a next action or review date. A tickler file is used to monitor these scheduled dates.

One of the basic principles of the model system is that no case is allowed to be without a next appearance or review date. This principle assures constant court control of the case and gives a monitoring element basic to good records management. Some changes in current practice will be required. For example, currently many courts wait for attorneys to request action and do not actively monitor the status or age of the case. In the model system, a next action date for the next court appearance or a review date always will be set to ensure that the case is reviewed on a regular basis until it is ultimately disposed. The scheduling of next action dates and the setting of review dates are a matter of local policy. However, the model system does suggest time frames for some review activities.

The calendar card, which also is created at case initiation as part of the multi-part court record, is the control record in the model system. The calendar card always is filed in the tickler system, known as the future action tub file, by the next action date which may be a date for a court appearance or a review of the file to determine the next step. The tickler system represents a simple manual system for monitoring the status of each case throughout its active life. Use of the calendar card will prevent

cases from becoming "lost" in the system. Calendar cards also enable registers to dispose of cases in a timely manner.

B. PROCEDURE

1. CASE INITIATION

A guardianship action commences with the filing of a petition for the appointment of a guardian of a person subject to guardianship. A guardian is appointed by the court to have care, custody, and control of the person, of a minor, or an incompetent, or the management of the estate of a minor, an incompetent, or a spendthrift. [§ 880.01 (3)] All records of Chapter 880 proceedings are considered closed if they relate to a finding of incompetency. [§ 880.33 (6)]

1.1 Receive initiating papers: petition for guardianship and order for hearing.

1.2 Perform quality review check and file stamp.

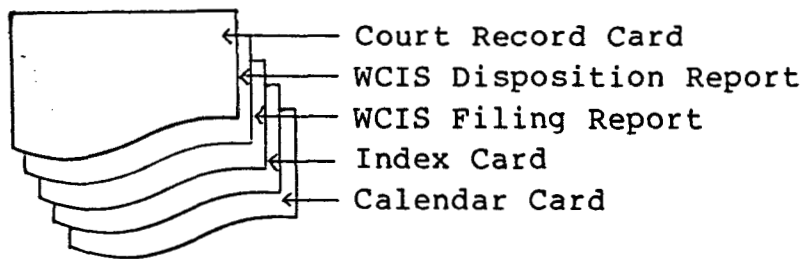
The petition must meet all the requirements of section 880.07 as to content.

1.3 Assign or verify date on order for hearing in accordance with local calendaring practice.

1.4 Appoint a guardian ad litem, if required by section 880.33 in the case of the guardianship of an incompetent, according to local procedures.

1.5 Assign a case number by pulling the next available prenumbered case folder. Case number form is in accordance with WCIS case numbering procedure. (See Appendix C, WCIS Reporting Manual for details.)

1.6 Create court record card. Basic case information is recorded on the top portion of the court record form and the filing of initiating documents is checked off and dates entered on the pre-printed docket area. (See Form No. GS1100 in the Forms Manual for detailed instructions.)



- 1.7 Detach and send the goldenrod (filing) reporting copy to WCIS
- 1.8 File index card in alphabetical order by the last name of the proposed ward.
- 1.9 File the calendar card in the future action tub file by the scheduled hearing date or, in the case of the guardianship of an incompetent, four days prior to the hearing date to monitor the filing of the physician's or psychologist's report on the mental condition of the proposed ward as required in section 880.33 (1).
- 1.10 File the court record card in case number order in the tub.
- 1.11 Place the adhesive label on the case folder.
- 1.12 Place the initiating papers in the case folder. File the case folder by case number.

2. RECEIPT AND ENTRY OF SUBSEQUENT DOCUMENTS

Once the initiating documents have been filed, other papers called subsequent papers are received periodically to be entered on the court record card and filed in the case folder. In the guardianship of an incompetent, this will include the report of a physician or psychologist as required in section 880.33 (1). These papers may be filed in person by the parties, received through the mail, or received directly in the courtroom.

- 2.1 Accept, date stamp and, if appropriate, stamp "Filed" on the first page of the subsequent papers.
- 2.2 Enter the date received and a brief description of the "Filed" papers on the court record card.
- 2.3 Take other action as appropriate which may be indicated in the content of the papers.
- 2.4 Return the court record card to the tub file.
- 2.5 File the documents in the case folder.

3. ADJOURNMENTS

At any time during the processing of a case, a hearing or activity may be cancelled (adjourned) on request of a party or the court and rescheduled for a new date. Register responsibilities as a result of an adjournment include updating the court record card and moving the calendar card to a new date.

- 3.1 Receive notice and approval of adjournment.
- 3.2 Reschedule or receive notice of the new hearing or review date.
- 3.3 Pull the court record card; note the adjournment and new hearing or review date; return court record card to tub file.
- 3.4 File the calendar card under the new hearing or review date in the future action tub file.
- 3.5 Note the new date on the calendar book or calendar worksheet in accordance with local procedures.

4. CALENDARING OF SUBSEQUENT HEARINGS

The court is responsible for calendaring the activities of guardianship cases as they proceed through the court system. In guardianship proceedings, these activities

may include the hearing on the appointment of the guardian, motion hearings, and trials. For each of these types of hearings, certain basic procedures apply. The same procedures apply whether the calendar prepared is a daily, weekly or monthly calendar.

- 4.1 In advance of the hearing, prepare the calendar by pulling the calendar cards filed under the appropriate hearing date or by referring to the calendar book or calendar worksheet.
- 4.2 Type and distribute the calendar in accordance with local procedure.
- 4.3 Using the calendar, pull case folder(s) and bring or send to courtroom for use during the hearing.

5. CASE MONITORING

Case status reviews consist of the regular checking of the future action tub file (calendar card tickler system) to identify cases where a statutorily required or scheduled activity appears not to have occurred and determine what necessary follow-up action should be taken.

- 5.1 Each day, check the future action tub file for calendar cards which remain filed under the previous day in the tickler system.
- 5.2 If the event being monitored is the filing of the physician's or psychologist's report in an incompetency guardianship, prior to the hearing, the register should:
 - (a) If the report has been filed, move the calendar card to the date of hearing.

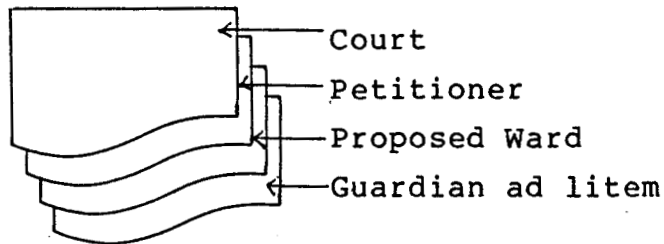
- (b) If the report has not been filed, notify the attorney and move the calendar card to one day before the scheduled hearing.
 - (c) If the report is not received at least one day prior to hearing date, the Register should notify the judge and the attorney and adjourn the hearing if so directed.
- 5.3 If the event scheduled for the previous day was a hearing, determine if no appearance was made or if the Register in Probate's office was not notified of the results of that hearing.
- (a) If no appearance was made, notify the responsible judge to determine action to be taken.
 - (b) If an appearance was made, determine the results of the event including the date of the next action; move the calendar card in the future action tub file to the date of the next action; update the calendar book or calendar worksheet and the court record card.
 - (c) If an adjournment was granted, move the calendar card in the future action tub file to the new date; update the calendar book or calendar worksheet and the court record card.

6. HEARING/TRIAL

The register's basic recordkeeping responsibility for all court hearings and trials is the same. It consists of taking concise minutes of the proceeding, updating the court record card, and filing the minutes and case papers received during the hearing in the case folder.

- 6.1 Take minutes in longhand on WCIS probate minute form. [§ 851.72 (3)] Send tear-off copy of minutes to WCIS.
- 6.2 Review the minutes for any actions required for calendaring, next action date or review date.

- 6.3 If a next appearance or action date is given, prepare and distribute in the courtroom the four-part notice form. (See Form No. GF101 in Forms Manual for detailed instructions.)



- 6.4 Update the court record card including entry of the next action date and return to tub file.
- 6.5 File the calendar card under the next action date in the future action tub file.
- 6.6 File minutes and other case documents received during the hearing in the case folder.

7. DETERMINATION AND APPOINTMENT OF GUARDIAN

The court must first make a determination whether the person is a proper subject for guardianship. If the person is found to be in need of a guardian, the court shall appoint the guardian.

- 7.1 If the court determines that the person is not a proper subject for guardianship, the case is dismissed.
- (a) Obtain judge's signature on the order of dismissal.
 - (b) File stamp the order of dismissal and update court record card with the disposition information.
 - (c) Send green (disposition) copy of the court record card to WCIS and file court record in numerical order in tub file.
 - (d) File the dismissal order in the case folder and file the case folder in numerical order.

7.2 If the court determines that the person is a proper subject for guardianship, the guardian shall be appointed and bond may be ordered.

- (a) Obtain judge's signature on the determination and order appointing guardian. [§ 880.12]
- (b) Determine sufficiency of bond, if ordered, according to sections 880.125 and 880.13.
- (c) Issue letters of guardianship after bond has been approved. [§ 880.14]
- (d) File stamp all documents and update court record card.
- (e) Send green (disposition) copy of court record card to WCIS with appropriate code to indicate creation of a guardianship.
- (f) File court record card in tub file.
- (g) File all papers in case folders and file in numerical order.

7.3 When a guardian of an estate is appointed, an inventory is required to be made in the same manner and subject to the same requirements as provided for the inventory of a decedent's estate. [§ 880.18]

- (a) File the calendar card six months from the date of issuance of letters to monitor the filing of the inventory of the ward's estate.
- (b) If the inventory is not filed as required, notify the judge who may then proceed as provided for in section 880.191 (2).
- (c) Create a guardianship accounting record card if inventory of ward's estate reveals assets of over \$1,000. [§ 880.25 (3)] (See Form No. PR804 in Forms Manual for details.)
- (d) Refer to Step 8, Annual Accounting Procedure.

8. ANNUAL ACCOUNTING PROCEDURE

Once a guardianship has been created, requirements for annual accounting dictate that a record be

created that will continue until the guardianship is terminated. A separate annual accounting record was created in Step 7.3. There are two options for the date on which the annual accounting may be due. Annual accounts are due either by March 1 of each year, or if the register in probate in accordance with local practice prefers, on the anniversary date of the creation of the guardianship [§ 880.25 (1)]

- 8.1 Guardianship accounting record cards are filed alphabetically in a tab file. If the option is to require accountings on the anniversary date, a "calendar card" created as a by-product of the guardianship accounting record card, can be used for monitoring annual account filings by keeping the calendar card in due date order in a tickler file.

If anniversary date accounting is used, notice may be sent 30 days in advance or on an exception basis. If notice is to be sent to all guardians, calendar cards should be filed in the tickler file 30 days in advance of the due date. This will alert the register to send the notice and copy of the annual accounting form one month prior to due date.

A plastic overlay form may be used with the accounting card to create a notice form which will eliminate the need for typing each individual notice. (See Form No. PR805 in Forms Manual for suggested format.)

- 8.2 If accounting due date is March 1, send out notice form to guardians informing them of due date along with a copy of the annual accounting form to be returned.

A plastic overlay form may be used with the accounting card to create a notice form to eliminate the need for typing out each individual notice. (See Form No. PR805 in Forms Manual for suggested format.)

- 8.3 Receive and file stamp annual account.

- 8.4 Review for correctness as per section 880.25 (4) Check to make sure no improper disbursements have been made and verify that securities listed actually exist. (Guardian may be required to bring these in for personal inspection by the register in probate.) [\$ 880.25 (2)]
- 8.5 Record annual accounting date and amount (balance on hand) on guardianship accounting record card and return to tub file. (Amount may be optional depending on notice requirements.)
- 8.6 Report annual accounting to WCIS on case transaction form.
- 8.7 If guardian fails to file annual accounting, proceed as provided for in sections 880.251 or 880.252.

9. TERMINATION OF GUARDIANSHIP

There are a number of conditions which allow a guardianship to terminate. These are set forth in section 880.26.

- 9.1 Receive and file stamp final account. [\$ 880.27]
- 9.2 Verify and approve account as done in annual accounting procedure. [\$ 880.25 (4)]
- 9.3 Receive and file stamp receipt and release of guardian by ward, if appropriate.
- 9.4 If all requirements are met, obtain signature of judge for order of discharge of guardian, and release bond.
- 9.5 Update the court record card with the filing of the final papers and file in tub file.
- 9.6 Report termination of guardianship to WCIS on case transaction form.
- 9.7 File final papers in case folder along with guardianship accounting card. File case folder by case number.

10. SPECIAL PROCEDURES

There are several procedures that are special guardianships in that they are restricted in length or scope from those conditions of a full guardianship of the person and/or property. These include temporary, limited and standby guardianships and conservatorships.

10.1 Temporary Guardianship

If the court finds that the welfare of a minor, spendthrift, or an incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it may, with or without notice, appoint a temporary guardian for a period not to exceed 60 days unless further extended by order of the court. The authority of the temporary guardian may be limited to the performance of duties respecting specific property or to the performance of particular acts as stated in the order of appointment. All provisions of the statutes concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment.
[§ 880.15(1)]

- (a) Follow case initiation procedures as outlined in Step 1 above. Usually the hearing is held immediately when the petition for temporary guardianship is filed.
- (b) Take minutes at hearing as in Step 6.
- (c) A temporary guardianship automatically terminates at the end of 60 days unless further extended by order of the court. At the end of the 60 days, the termination procedures in Step 9 are followed in order to release the bond.
- (d) If a petition for guardianship is filed while a temporary guardianship is active, neither a new case file nor court record card are created. The case will continue on and proceed as a regular guardianship. The temporary guardianship terminates when the letters of guardianship are issued.

10.2 Limited Guardianship

A limited guardianship is used when a person demonstrates that he or she is capable of managing some of his or her affairs but limited supervision of their property is desirable. The constraints on a limited guardianship are set forth in section 880.37. The initiating document is a petition for limited guardianship; procedurally the process of the regular guardianship as previously set forth is followed.

10.3 Standby Guardianship

A standby guardian proceeding may be commenced when it is anticipated that a ward's current guardian will not be able to continue in that capacity and another guardian should be available to step in immediately to provide for continuous supervision. The standby guardian assumes the position, powers, and duties of guardian effective immediately upon the death, incapacity or resignation of the initially appointed guardian. [§ 880.36] A standby guardian may be appointed at the same hearing as the guardian.

- (a) All documents relating to standby guardian are filed in the guardianship case file. Follow Step 2, Receipt and Entry of Subsequent Documents.
- (b) If the standby guardian becomes the successor guardian, the court is notified and the guardianship continues without interruption.

10.4 Conservatorships

A conservatorship is a voluntary guardianship whereby a person who believes that he or she is unable to properly manage his or her property or income, petitions the court to appoint a conservator. A conservator has all the powers and duties of a guardian of the property of an incompetent person. However, there is no finding of incompetency in this case. The procedure requires a hearing and proceeds virtually the same as a guardianship. The conservator's powers cease upon being removed by the court or upon the death of the person whose estate is being conserved.

- (a) Follow Steps 1 through 8 as applicable with "conservator" and "conservatorship" replacing "guardian" and "guardianship".
- (b) Termination of conservatorship follows the same procedure as the termination or a guardianship of the property. See Step 9, Termination of Guardianship.

ADOPTION PROCEDURE

A. INTRODUCTION

The model recordkeeping system designed for adoption case processing incorporates several changes from traditional recordkeeping practices. The key elements are outlined in the following.

1. A new multi-part index card is used.

A new three-part index card form has been designed for the model system. This form enables clerks to prepare the adoptee index card, the adoptive parent index card, and a calendar card in a single step. These index cards can be filed in true alphabetical order and are intended to replace the semi-alphabetic index books now used in some courts.

2. Cases are always scheduled for a next action or review date. A tickler file is used to monitor these scheduled dates.

One of the basic principles of the model system is that no case is allowed to be without a next appearance or review date. This principle assures constant court control of the case and gives a monitoring element basic to good records management. Some changes in current practice will be required. For example, currently many courts wait for attorneys to request court action and do not monitor the status or age of the case pending notification from the attorneys

that some hearing should be scheduled. In the model system, a next action date for the next court appearance or a review date always will be set to ensure that the case is reviewed on a regular basis until it is ultimately disposed. The scheduling of next action dates and the setting of review dates are a matter of local policy. However, the model system does suggest time frames for some review activities.

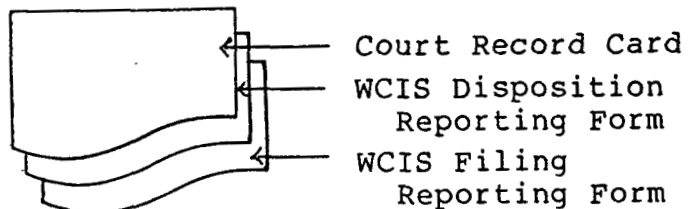
The calendar card, which also is created at case initiation as part of the multi-part index form, is the control record in the model system. The calendar card always is filed in a tickler system, known as the future action tub file, by the next action date which may be a date for a court appearance or a review of the file to determine the next step. The tickler system represents a simple manual system for monitoring the status of each case throughout its active life. Use of the calendar card will prevent cases from becoming "lost" in the system.

B. PROCEDURE

1. CASE INITIATION

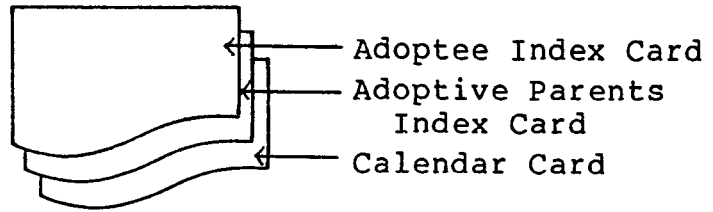
An adoption proceeding is commenced with the filing of a petition for adoption with the court. All records pertaining to an adoption proceeding are closed and shall be kept in a separate locked file. [§ 48.93]

- 1.1 Receive initiating papers (petition for adoption and order for hearing and investigation).
- 1.2 Perform quality review; check and set date for hearing according to local calendaring procedure allowing time (90 days) for the investigation and report if required by section 48.88(2).
- 1.3 File stamp papers.
- 1.4 Assign a case number by pulling the next available prenumbered case folder. Case number format is in accordance with WCIS case numbering procedure. Adoption cases are identified with an "AD" as the case number identifier.
- 1.5 Pull a three-part court record card form. Enter basic case information on the top portion of the court record form and enter the filing of the petition and order for hearing and the date for hearing on the lower portion of the form. (See Form No. AD1000 in Forms Manual for detailed instructions.)



- 1.6 Detach and send the goldenrod (filing) reporting form to WCIS.
- 1.7 File the court record in case number order in the lockable tub file. [§ 48.93]

- 1.8 Pull a three-part index card form. Enter the name of the adoptee and the adoptive parents. (See Form No. AD1001 in Forms Manual for detailed instructions.)



- 1.9 Detach the three parts of the index card form.
- 1.10 File the index cards in alphabetic order in the locked index system. [§ 48.93]
- 1.11 File the calendar card in the future action tub file by the next action date. If an investigative report is required, this date will be 80 days or 10 days before the scheduled hearing date, whichever is sooner.
- 1.12 Place the petition and order and other case papers in the case folder. File the case folder by case number in a separate locked adoption file. [§ 48.93]

2. RECEIPT AND ENTRY OF SUBSEQUENT DOCUMENTS

Once the initiating document has been filed, other papers called subsequent papers are received periodically to be entered on the court record card and filed in the case folder. These papers may be filed in person by the parties, received through the mail, or received directly in the courtroom. In an adoption proceeding, these papers include required consents to adoption, certified copy of terminations of parental rights, investigation and report.

[§ 48.84]

- 2.1 Accept, date stamp and, if appropriate, stamp "Filed" on the first page of the subsequent papers.
- 2.2 Enter the date received and a brief description of "Filed" papers on the court record card.
- 2.3 Take other action as appropriate which may be indicated in the content of the papers.
- 2.4 Return the court record card to the tub file.
- 2.5 File the documents in the case folder.

3. ADJOURNMENTS

At any time during the processing of a case, a hearing or activity may be cancelled (adjourned) on request of a party or the court and rescheduled for a new date. Register responsibilities as a result of an adjournment include updating the court record card and moving the calendar card to a new date.

- 3.1 Receive notice and approval of adjournment.
- 3.2 Reschedule or receive notice of the new hearing or review date.
- 3.3 Pull the court record card; note the adjournment and new hearing or review date; return court record card to tub file.
- 3.4 File the calendar card under the new hearing or review date in the future action tub file.
- 3.5 Note the new date on the calendar book or calendar worksheet in accordance with local procedures.

4. CASE MONITORING

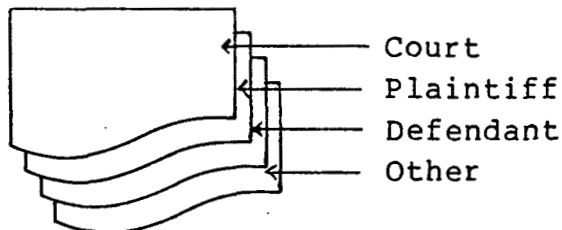
Case monitoring consists of the regular checking of the future action tub file (calendar card tickler system) to identify cases in which a scheduled activity appears not to have occurred and to determine what necessary follow-up action should be taken.

- 4.1 Each day, check the future action tub file for calendar cards which remain filed under the previous day in the tickler system.
- 4.2 If the event scheduled for the previous day was the review for the investigative report, take the following action:
 - (a) If the report has been received, move the calendar card to the scheduled hearing date.
 - (b) If the report has not been received, depending on local procedure, notify the agency responsible for the report of the 90 day time limit or scheduled hearing date. Move the calendar card ahead to the end of the 10 day period.
- 4.3 If the event scheduled for the previous day was a hearing, determine if no appearance was made or if the Register's office was not notified of the results of that hearing.
 - (a) If no appearance was made, notify the trial judge to determine action to be taken.
 - (b) If an appearance was made, determine the results of the event including the date of next action; move the calendar card in the future action tub file to the date of the next action; update the calendar book or calendar worksheet and the court record card.
 - (c) If an adjournment was granted, move the calendar card in the future action tub file to the new date; update the calendar book or calendar worksheet and the court record card.

5. HEARING

The Register has basic recordkeeping responsibility for all court hearings. It consists of the taking of concise minutes of the proceeding, updating the court record card, and filing the minutes and case papers received during the hearing in the case folder. In most instances an adoption is either granted or denied at the adoption hearing and no further proceedings are scheduled. [§ 48.91]

- 5.1 Take minutes in longhand on WCIS minutes form. Send yellow copy of minutes to WCIS.
- 5.2 Review the minutes for any actions required for calendaring, next action date or review dates. (In most cases there will be no further activity.)
- 5.3 If a next appearance or action date is given, prepare and distribute in the courtroom the four-part notice form. (See Form No. GF101 in Forms Manual for detailed instructions.)



- 5.4 Update the court record card including entry of the next action date and return to the tub file.
- 5.5 File the calendar card under the next action date in the future action tub file.
- 5.6 File minutes and other case documents received during the hearing in the case folder.

6. CASE DISPOSITION

An adoption is closed when the petition for adoption is either granted or denied.

- 6.1 Enter the disposition information on the top portion of the court record card; update the lower portion of the court record card.
- 6.2 Detach the green (disposition) reporting form from the court record card and send to WCIS.
- 6.3 Receive order granting or denying adoption signed by the judge.
- 6.4 File the court record card in the tub file.
- 6.5 If the action is denied, place case documents in case folder.
- 6.6 If adoption is granted, collect the required fee and remit with the complete report of adoption to the State Bureau of Vital Statistics, unless the birth certificate is not to be changed in accordance with section 48.94.

CIVIL COMMITMENT PROCEDURE

A. INTRODUCTION

The model recordkeeping system designed for civil commitment case processing incorporates several changes from traditional recordkeeping practices. The key elements are outlined in the following.

1. A revised multi-part court record card is used.

A revised court record card has been designed for the model system. A clerk will only have to type basic case initiation information once to create the court record, index card, calendar card, and WCIS filing and disposition reports.

The court record will be the exclusive case history record. A number of courts now use records other than the court record to keep case history information. For example, some courts use worksheets as an additional record of papers filed.

The index card will be filed in true alphabetical order and is intended to replace the semi-alphabetical index books now used in some courts.

2. Cases are always scheduled for a next action or review date. A tickler file is used to monitor these scheduled dates.

One of the basic principles of the model system is that no case is allowed to be without a next appear-

ance or review date. This principle assures constant court control of the case and gives a monitoring element basic to good records management. Time constraints, imposed by statute, are quite strict in commitment proceedings. Case monitoring is important to ensure that all statutory time limits are met. In the model system, a next action date for the next court appearance or a review date always will be set to ensure that the case is reviewed on a regular basis until it is ultimately disposed. The scheduling of next action dates and the setting of review dates are a matter of local policy. However, the model system does suggest time frames for some review activities.

The calendar card, which also is created at case initiation as part of the multi-part court record, is the control record in the model system. The calendar card always is filed in a tickler file by the next action date, which may be a date for a court appearance or a review of the file to determine the next step. The tickler file represents a simple manual system for monitoring the status of each case throughout its active life. Use of the calendar card will prevent cases from becoming "lost" in the system. Calendar cards also enable registers to dispose of cases in a timely manner.

B. PROCEDURE

1. Case Initiation

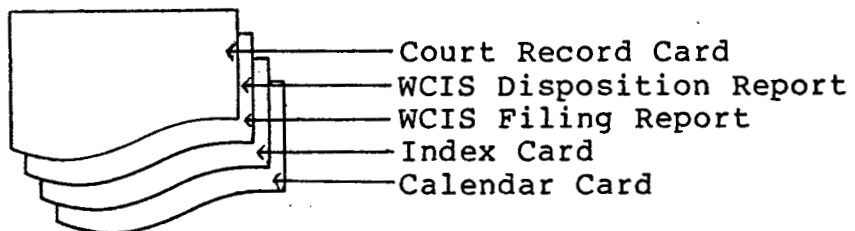
Civil commitment procedures are strictly governed by Chapter 51, State Mental Health Act. All involuntary civil commitments are commenced when the applicants file a petition with the court. This petition may be in one of several forms depending on the circumstances. Documents serving as petitions to the court include: application by superintendent/director, affidavit of emergency detention, petition for examination, or petition for involuntary alcoholic commitment.

The commitment statutes prescribe strict time limits and notice requirements for the proceeding. In emergency detention cases, the court must take action within 72 hours [§ 51.15(4)(5)] in order for detention to continue. In these circumstances, the court must ensure that the notice requirements are met [§ 51.20(2)] and that the subject of the commitment is represented by counsel [§ 51.20(3)]. The primary responsibility for drafting the notices and orders lies with the district attorney or corporation counsel [§ 51.20(4)]. In some counties, however, the drafting of these papers is done in the probate office. The

procedural guidelines will acknowledge these papers as they enter the flow but will not address their actual preparation.

All access to court records under Chapter 51 is closed except as provided for in section 51.30(3).

- 1.1 Receive initiating papers.
- 1.2 Assign a case number by pulling the next available pre-numbered case folder. Case number format is in accordance with WCIS case numbering procedure. (See Appendix C, WCIS Reporting Manual for details.)
- 1.3 Schedule probable cause hearing date within 72 hours of detention if subject has been detained [§ 51.20(7)], according to local procedure.
- 1.4 Prepare notices, orders for temporary detention, or attachment order, orders appointing attorney, and order for probable cause hearing if required by local practice.
- 1.5 File stamp all received papers.
- 1.6 Create a court record card. Enter basic case information on the top portion of the court record form and enter the filing of all initiating documents on the lower portion of the form. (See Form No. CC900 in the Forms Manual for detailed instructions.



- 1.7 Detach and send the goldenrod (filing) reporting form to WCIS and file the court record card in the closed tub file.

- 1.8 File index cards in closed index file by last name of the subject of the proceeding. [§ 51.30(30)]
- 1.9 File the calendar card in the future action tub file by the hearing date as determined in step 1.3.
- 1.10 File papers received in case folder and file in closed file area by case number. [§ 51.30(3)]

2. RECEIPT AND ENTRY OF SUBSEQUENT DOCUMENTS

Once the initiating document has been filed, other papers called subsequent papers are received periodically to be entered on the court record card and filed in the case folder. These papers may be filed in person by the parties, received through the mail, or received directly in the courtroom.

- 2.1 Accept, date stamp and, if appropriate, stamp "Filed" on the first page of the subsequent papers.
- 2.2 Enter the date received and a brief description of "Filed" papers on the court record card.
- 2.3 Take other action as appropriate which may be indicated in the content of the papers.
- 2.4 Return the court record card to the tub file.
- 2.5 File the documents in the case folder.

3. ADJOURNMENTS

Within certain statutory time limits [§ 51.20(7)(a)], a hearing may be cancelled (adjourned) on the request of the subject or his attorney and rescheduled for a new date. Register responsibilities as a result of an

adjournment include updating the court record card and calendar book or worksheet, and moving the calendar card to a new date.

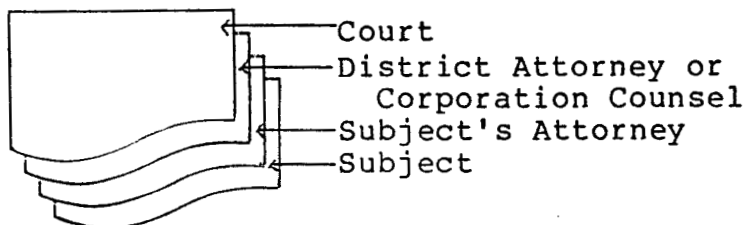
- 3.1 Receive notice and approval of adjournment.
- 3.2 Reschedule or receive notice of the new hearing or review date.
- 3.3 Pull the court record card; note the adjournment and new hearing or review date; return court record card to tub file.
- 3.4 File the calendar card under the new hearing or review date in the future action tub file.
- 3.5 Note the new date on the calendar book or calendar worksheet in accordance with local procedure.

4. PROBABLE CAUSE HEARING

After the filing of the petition as described in Step 1, the court must hold a hearing to determine if there is probable cause to believe the allegations set forth in the petition and that continued involuntary detention is warranted, if the subject has been detained. [§ 51.20(7)] These hearings must occur within 72 hours (excluding Saturdays, Sundays, and legal holidays) after the individual arrives at the detention facility if detained (unless postponed up to seven days by the individual or his/her counsel), or within a "reasonable" period of time [§ 51.20(7)(b)] of the filing of the petition if the individual is not

detained. The recordkeeping responsibility consists of taking concise minutes of the proceeding, updating the court record card, and filing the minutes and case papers in the case folder.

- 4.1 Take minutes in longhand on WCIS minute form. Send copy to WCIS, making sure that the subject's name does not appear or is not legible on that copy.
- 4.2 Review the minute for any actions required for calendaring, next action date or review dates. If the case is dismissed at probable cause hearing, refer to Step 6 (Case Disposition).
- 4.3 If the case is not dismissed, the date for a final hearing will be determined. Prepare and distribute in the courtroom the four-part notice form. (See Form No. GF101 in Forms Manual for detailed instructions.)



Additional notices may be required for witnesses and other persons designated by the court. [§ 51.20(10)] These are prepared and sent out by the Register in Probate if required by local practice.

- 4.4 Update the court record card including entry of the next action date and return it to the closed tub file.
- 4.5 File the calendar card under the next action date in the future action tub file.
- 4.6 File the minutes and other case documents received during the hearing in the case folder.

5. FINAL HEARING/TRIAL

The final hearing or commitment trial may be a jury trial as provided for in Wis. Stat. § 51.20(11). The final hearing is always held, provided the case was not dismissed at the probable cause hearing, within a statutory time limit depending on the particular circumstances of the case. [§ 51.20(8)] Prior to the final hearing, an examination [§ 51.20(9)] ordered at the probable cause hearing must have been completed and made available to the subject's counsel 48 hours in advance of the final hearing. [§ 51.20(10)(b)] The recordkeeping responsibilities of the Register are much the same as for the previous hearing.

- 5.1 Take minutes in longhand on WCIS minute form. Send copy to WCIS making sure that the subject's name does not appear or is not legible.
- 5.2 Review the minutes for any action to be taken as required by the proceeding. As a result of the hearing, the court makes a determination as to dismissal, care or treatment, or commitment.
- 5.3 Update the court record as to the results of the hearing and return to closed tub file. (See Step 6, Case Disposition).
- 5.4 File minutes and other case documents received during the hearing in the case folder.
- 5.5 File calendar card in accordance with disposition determined by the court. (See Step 6, Case Disposition.)

6. CASE DISPOSITION

As a result of the final hearing, a determination is made to dismiss the petition, order protective placement, protective services or commitment to county boards described under sections 51.42 or 51.437 for inpatient or outpatient care, or the subject may decide to be committed voluntarily.

- 6.1 Enter the disposition information on the top portion of the court record card; update the lower portion of the court record card.
- 6.2 Detach the green (disposition) reporting form from the court record card and send to WCIS.
- 6.3 Receive and file stamp all dispositional orders and enter on the lower portion of the court record card. File the court record card in the tub file. Place the case documents in the case folder and file in numerical order.
- 6.4 File the calendar card in the case folder for use in monitoring future post-dispositional activity.

7. POST-DISPOSITIONAL REVIEW

In civil commitment proceedings, all commitment orders must be brought before the court for periodic review. An original commitment may be for a period not to exceed six months and all subsequent commitment orders may be for a period not to exceed one year. [§ 51.20(13)(g)] The initiation of these reviews is the responsibility of the county boards to which commitment was made.

[§§ 51.42 or 51.437] The boards must apply to the court for extension of commitment. In form, the hearing for this extension is the same as described in Step 5 (Final Hearing/Trial). [§ 51.20(g)(3)]

- 7.1 Receive application for extension and file stamp.
- 7.2 Schedule date for hearing in accordance with local procedures. Prepare notices to parties only if required by local practice.
- 7.3 Remove calendar card from case folder and file in future action tub file by hearing date.
- 7.4 Update court record card with receipt of papers and next action date and return to file.
- 7.5 File papers received in case folder.
- 7.6 Follow procedures outline in Step 5 (Final Hearing/ Trial) for hearing.
- 7.7 Upon completion of the hearing, update the court record card and file calendar and case papers in case folder and file in numerical order.

8. RE-COMMITMENT PROCEDURES

Occasionally, after a subject has been discharged from commitment, new commitment proceedings are commenced. The new commitment proceeding is actually a new case, however, most courts find it desirable to file all documents relating to an individual's commitment history in a single case folder. Neither a new court record card nor a case folder need to be created. The other procedural steps are exactly the same as if the case were a new commitment.

- 8.1 Check index file for case number of previous commitment.
- 8.2 Assign a "new" case number by assigning an alpha suffix to the end of the previous commitment.

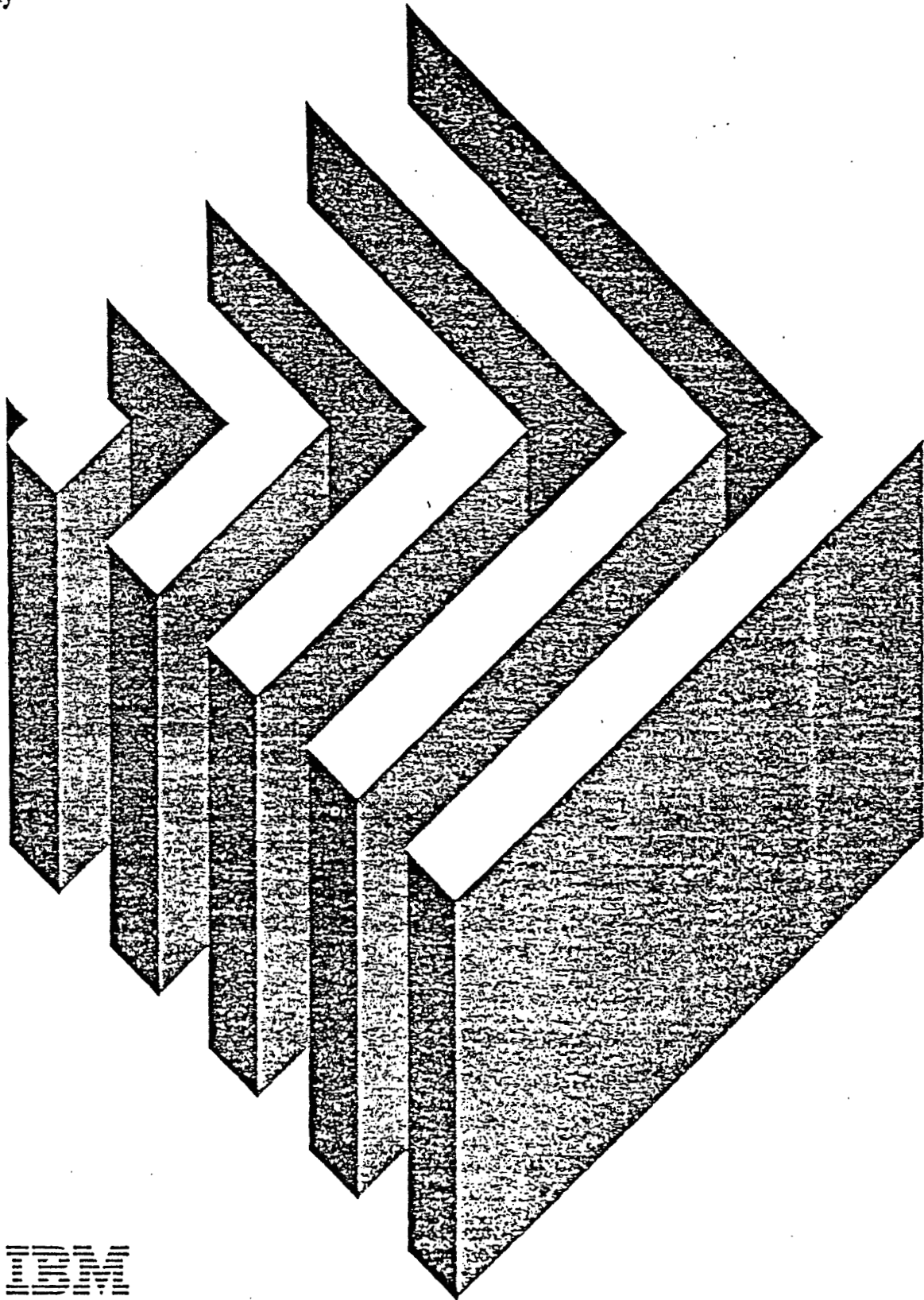
Example: Previous case number 81ME36
New case number 81ME36A

- 8.3 Update the old index card with the addition of the new case number.
- 8.4 A new court record card may be created with the "new" (alpha suffix) number which will be filed behind the original court record card in the tub file. Filing and disposition information is reported by sending to WCIS the goldenrod (filing) and green (disposition) copies of the court record card. If a new court record card is not created, filing and disposition information is reported to WCIS on the case transaction form for the new commitment proceeding. Docketing then continues on the original court record card.

CHAPTER 10: Data Processing (Reserved)

The IBM Displaywriter System

To help typists perform
productively and comfortably



IBM

CHAPTER 11: Courtroom Clerical Procedures

MENOMINEE
TRIBAL COURT
JURY SYSTEM MANUAL

TRANSCRIPTION OF PROCEEDINGS

The Tribal Judiciary and Interim Law and Order Code § 1-2-12 (2) and Court Rule 22 require proceedings of all trials to be transcribed verbatim, unless waived by the parties. The court is currently not transcribing all tapes (recommended by the National Center), but only those needed and lets the rest accumulate to be transcribed as time allows by temporary CETA clerks.

RECOMMENDATION

It is the Center's recommendation that for purposes of saving record storage space and clerical time that the code and court rule requiring all proceedings to be transcribed be changed to conform with the court's current practice of transcribing only those proceedings where a transcript has been requested.

The court rules can be changed by the Supreme Court. The code provision would only require striking the work "written" in the sentence "It shall be the duty of the Court Clerk to . . . and further to keep a "written" record of all proceedings of the court, . . ." to eliminate the need for transcribing all proceedings.

AUDIO/VIDEO TECHNOLOGY AND THE COURTS GUIDE FOR COURT MANAGERS

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Selecting Audio Equipment

Any recording system must provide an accurate record of the court proceedings. Although there are many choices in equipment design and features, not all audio systems are acceptable. The variety of options may confuse the court manager who is selecting audio equipment for courtroom use. Problems may arise because there are no precise national standards for audio fidelity recording for courtroom dialogue. Only a few audio recording systems have been developed primarily for courtroom recording, and several audio manufacturers have provided inferior or inappropriate audio recording systems to the courts during the 1960s and early 1970s—unfortunately, a few vendors still attempt to sell such equipment to some courts.

In the late 1960s, several state courts and research organizations began prescribing recording standards and equipment features needed to ensure a high quality, accurate audio recording system. As a result, several companies have developed audio systems specifically incorporating features and capabilities desired for recording judicial proceedings.

Nationwide audio standards for courts are difficult to establish because courts differ in courtroom acoustics, type of proceedings, uses of equipment (recording, playback, transcription, or a combination of such tasks), portability requirements, and specialized court practices.

Nevertheless, many general features and capabilities discussed in this report should be mandatory to ensure a high quality audio recording in a courtroom, and if necessary, to efficiently prepare a verbatim transcript.

Any evaluation and selection process for audio recording systems should include a rigorous field test of the equipment in court. The court should require that any audio recording system be evaluated and operated continuously under actual court conditions for several days or weeks.

This chapter further elaborates on selected technical specifications and components and the rationale for such choices. Appendix A contains a detailed listing of the recommended system components and configurations for utilizing audio recording.

AUDIO TAPES

Reels

Although polyester tapes are more expensive than acetate, they are recommended because of their greater tensile strength and resistance to moisture and brittleness. Acetate tapes should be avoided.

The tape size depends upon the time required for continuous recording in the courtroom, recording speed, and tape quality. The principal choices are 7-inch or 10-inch tape

reels because the 7-inch reels require smaller, less powerful motors and brakes within the tape recorder, allowing use of a less expensive and more portable machine. The 7-inch reels also require less time to locate a selected portion of the tape, provide the necessary continuous recording capability (few court proceedings last longer than three hours without a recess), and provide a more universal size that can be operated on another manufacturer's machines.

Cassettes

Standard tape cassettes are available with varying tape lengths and thicknesses. Mini-cassettes are not recommended for recording court proceedings. Cassette tapes should have a ferric oxide coating and a tensilized polyester backing for greater strength. Chromium dioxide coating is not recommended for cassettes because chromium dioxide is highly abrasive and will rapidly deteriorate the recording heads.

The major limitation of cassettes is the limited amount of continuous recording time. Three actions can increase the recording time: reducing the tape speed, decreasing the tape thickness, or installing a dual cassette recorder system.

The established industry standard for cassette tape speed is 1 7/8 ips. Established for music recording, this speed unnecessarily limits continuous recording time because it is unnecessary for voice recording in the courtroom. A 15/16 ips speed provides excellent recording quality for courtroom testimony and substantially increases the recording time for each cassette. While C-60 cassettes (60 minutes of continuous one-way recording at 15/16 ips without operator intervention to change tapes) are an excellent standard, most courts which have used high quality C-90 cassettes (composed of a smaller tape thickness than C-60 cassettes) have been satisfied with both audio quality and cassette reliability. Some manufacturers offer even longer recording time by lowering the tape speed below 15/16 ips. The courts should assess the tape savings possibility as long as acceptable audio fidelity can be maintained.

MICROPHONES

Some microphone features are mandatory (balanced, low impedance). Other features (such as directivity of the microphone) will depend upon the type of court proceeding, the acoustics of the particular courtroom, the location of the particular microphone, and the number and locality of participants.

Microphone Type

The dynamic microphone is most suitable for recording

courtroom proceedings. The dynamic type is preferred over the electret condensor because it requires minimal maintenance and offers sufficient fidelity for voice recording, simplicity and sturdiness, and adaptability to public address systems.

A lapel (lavalier) microphone can be attached to a participant. It is not recommended for most judicial proceedings because a lavalier microphone is more expensive, is less reliable, and records extraneous noises—such as movements by the participant. In addition, it is often improperly attached to the participant, and causes inconvenience and delays when participants need to change lavaliers.

Some manufacturers offer a pause control (inhibitor) switch to be used by the judge or clerk to stop the recording during bench conferences and the like. Such an inhibitor switch is not recommended. Instead, a particular microphone should be temporarily disengaged to permit parties to have private conversations. A spring-loaded push-button switch allows a participant to momentarily disengage a microphone when the button is depressed. This push-button control ensures continuous recording without accidental stoppage, but allows participants to hold off-the-record conversations.

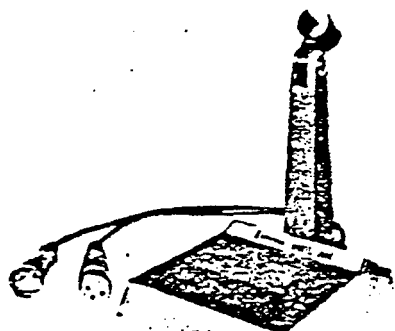


Figure 5.1. Spring-loaded microphone.

Output Impedance

The microphone should have a low impedance (150-600 ohms) to help reduce or eliminate extraneous noise.

Balanced Microphones

Balanced microphones contain three wires (two signal wires and a shield) connecting the microphone to the recorder. In many courts, microphones will require lengthy extension cords (20-75 feet) to be connected to the recorder. The microphone may pick up electrical interference from radio, television, or citizens band which must be screened out. If unbalanced microphones (containing only two signal wires) are installed, such signals will be recorded on the tape and may interfere with clarity of the courtroom testimony. Use of balanced microphone wires and connectors will reduce, and possibly eliminate, these extraneous signals and sounds. The recording device must also be equipped with balanced to ground input connectors. This type of connector

removes the extraneous noise from the audio track before it can be recorded on the tape.

Microphone Frequency Range

The microphone must be capable of picking up a sufficient range of sound. For ordinary courtroom conversation the frequency response of the microphones should be 100 to 10,000 hertz (Hz).

Microphone Connections

Microphones must be attached to the recorder. To ensure a permanent connection, professional quality three-prong locking connectors such as Cannon or Switchcraft (XLR) should be installed. This type of connector will prevent accidental disconnections of microphones from the recorder.

Directivity

A microphone is designed to record sound from specific directions in relation to its placement. The recording pattern of microphones can be classified into two categories—uni-directional (cardioid) microphones and omni-directional microphones. The uni-directional microphone is more practical when speakers remain stationary or in close proximity to the microphone, when extraneous sounds from outside or inside the courtroom need to be reduced, and when participants are soft-spoken.

The omni-directional microphone may provide greater latitude in recording sound when a participant, such as a lawyer, does not remain stationary. However, this type of microphone will pick up more extraneous courtroom sounds.

There is no definitive standard concerning the directivity of microphones used at a particular location in the courtroom. The type of proceedings and general courtroom acoustics are important to determine whether a particular microphone should be uni- or omni-directional. The microphone standards listed in Appendix A suggest the type of directivity for a particular microphone location.

While the audio recording system must allow participants some flexibility in movement, some participants, particularly lawyers, might have to change walking patterns in order to ensure that the microphone picks up appropriate speech. Any speaker should face in the general direction of a microphone.

Microphone Stands

Whenever possible, microphones should be inserted into sound-isolated (acoustically isolated) stands or holders to reduce extraneous noise or vibration. Sound-isolated stands are very important for microphones placed on tables or desks—such as counsel tables and at the judge's bench—to reduce noises such as writing, hitting, or shuffling papers. Microphones should be placed on floor stands which should contain sound-isolated holders. The use of portable microphone stands is suggested to allow some flexibility in positioning the microphones for different types of court proceedings.

Microphone Mixer

Some courts may prefer or need to install more microphones in the courtroom than can be attached to the recorder. While a microphone mixer can be installed, it is not suggested because it requires a machine operator to monitor and to frequently change microphone signal levels.

Three alternatives to a separate microphone mixer are possible. In some courts, an additional microphone may be necessary for a short time such as during the voir dire examination. One of the regular microphones could be temporarily moved; a microphone normally located at the witness stand or counsel table could be moved close to the jury box. In other courts an additional microphone may be permanently needed.

Additional microphone inputs could be installed by using a Y-connector to connect two microphones into one recording track. In this way, eight microphones can be cascaded into a four-track recorder. While feasible, these Y-connectors weaken the signal strength and may affect sound fidelity.

Instead, the recording unit should contain a microphone mixer within the recorder. This approach allows additional microphones to be connected directly to the recorder without loss of signal strength or fidelity.

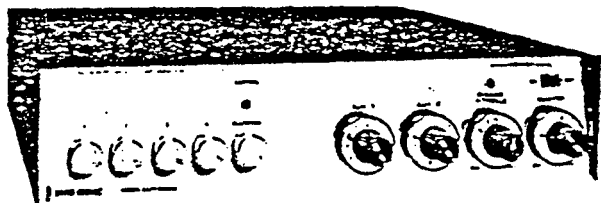


Figure 5.2. Microphone mixer.

AUDIO RECORDERS

Recorders are the most critical and complex component in an audio recording system. Recorders must accurately record proceedings under varying conditions, different speakers, and diverse types of proceedings. There are various recorder designs and features available. Some are necessary to ensure comprehensive and comprehensible recording; other features are optional.

Dimensions

Courts tend to prefer smaller, portable recording machines. With the development of integrated electronic circuits, small recorders can now provide high quality audio fidelity with minimal audio distortion, excellent performance, higher reliability, and better portability. Both reel and cassette recording systems are becoming both smaller and easier to operate. As a result, the weight of any audio recording system should never exceed 50 to 55 pounds, but preferably would weigh 20 to 25 pounds. Heavier recorder units may contain outdated electronic components or may not be designed specifically for mobility or courtroom applications, such as police recording systems modified for courts. Some jurisdictions will prefer portable, lightweight equipment for relocating systems among courtrooms or

localities. A cassette recording system weighing under 25 pounds is recommended for such uses. Any audio recorders selected should be small enough to be placed on a standard desk or cabinet already available in the courtroom. Recorders should not exceed 24 inches in any dimension or exceed four cubic feet in volume.

Operating Conditions

A recorder should be operable in any courtroom facility regardless of atmospheric conditions; air conditioning is not required. The machine should be able to operate under conditions ranging from 32 to 105 degrees Fahrenheit temperature and 0 to 99 percent relative humidity, with a standard power supply (120 volts, 60 Hz), and withstand voltage variations ("brownouts") of up to 15 percent.

Multi-Track (Channels)

Multi-track recorders provide separate and distinct channels along which audio signals coming from different microphones are separately recorded on the tape and permit voices recorded from various microphones to be played back separately or in any combination desired. Multi-track recording equipment allows a listener or transcriber to more easily identify the speaker and clearly distinguish and isolate statements made simultaneously. The multi-track capability also permits the court to remove or reduce certain deleterious or undesirable background noises by listening to just the microphone nearest the individual and to modify the sound volume on a particular track to improve the muffled, whispered, or loud statement being made by a participant. These extraneous courtroom noises can be controlled both during the proceeding and also during playback of the tape.

The four-track recording system should be used for audio recording and transcription of court proceedings. Only under specialized circumstances should a six- or eight-track recording machine be considered. Four-track recorders should conform to NAB reel standards or Phillips cassette standards for four-track width and track spacing medium being used. This will permit compatibility of recorders and transcribers among jurisdictions which may use different manufacturers or models of equipment.

Motors

The number and type of motors can substantially affect the overall reliability of the recorder and tape speed control. Cassette recorders require only one motor. The best and most durable reel tape recorders utilize three separate motors: one drives the capstan, a rotating shaft which pulls the tape at a constant speed; another controls and powers the take-up reel; and a third controls the supply reel. The capstan should be controlled by solenoid-operated switches and servo-capstan drives are recommended.

The three-motor reel recorder is preferred because it stabilizes the tape speed better, reducing the wow (slow repeated fluctuations) and flutter (short rapid fluctuations), and reduces audio distortions; it is also a simpler mechanical

device and more reliable than a single motor system.

The single motor reel recorder system is less reliable and durable since it requires additional mechanical linkages, belts and pulleys to operate the capstan and reels.

Volume Control

Because of the number and varied location of participants during a court proceeding, the recorder must allow the operator to control and adjust the volume input from the various microphones. The operator should be able to adjust the gain control separately for each microphone or channel connected to the audio system. Two types of automatic volume control devices are available—gain control or audio limiters—to modify weak or loud signals to a volume level comprehensible by most listeners. The automatic gain control device automatically amplifies weak signals and reduces loud signals so that the audio volume is within prescribed limits, regardless of the volume of the original sound. The audio limiter merely reduces loud signals to the prescribed volume range. Since sound levels are constantly changing in the courtroom and court personnel may not have time to make quick adjustments, automatic gain control or audio limiter control with a manual override is suggested.

Control Switches

The recorder control, each clearly identified in English, should be located on the front panel and should include six modes: forward, pause, fast-forward, fast-reverse, stop and record. Solenoid switches are preferable to manual switches. The manual switches are cheaper but less reliable. The solenoid switch consists of a push-button relay coupled to a microswitch which activates an electromagnet. This switching mechanism is simpler to operate and provides better reliability.

Index Counter

An index counter must be easily visible to the operator so that appropriate log notations may be made during the proceeding. Some jurisdictions may want to add to the recorder a display (such as a light emitting diode—LED) which permits any participant in the courtroom to see and record the precise index number. With an LED, participants are assured that the machine is operating, and counsel or court personnel can note for later reference, readback, or transcription the point on the tape that records a specific statement.

To reduce prolonged searching for a particular tape segment, the index counter must be so reliable that the desired information can be located within a few seconds after the counter number is reached. In addition, the counter should have a button to reset the counter to zero.

An automatic electronic search option, available from some manufacturers, permits the user to specify a counter number for which the recorder will automatically search. This mechanism permits very fast and accurate indexing, but will increase the cost for each machine.

Monitoring Equipment

Court personnel should monitor the recorder during court proceedings to ensure that a complete record is being made and to readjust the audio recording system when necessary. The operator must be able to accomplish the following:

- quickly monitor each recording track by means of an earphone jack;
- quickly adjust the volume, if necessary;
- listen to the quality of the recorded signal on any track;
- easily view indicators that show strength of audio signals being recorded on the tape; and
- know when a serious malfunction has occurred.

The recorder, therefore, must have the following features:

- a separate VU-meter or light indicator for each audio track;
- volume (gain) control for each track;
- output signal connected by an earphone jack to a headset;
- a tape monitoring output from a playback head located after the record head;
- a signal-sensing circuit to automatically sense that a previously recorded audio signal is on the tape; and
- an audible signal to notify the operator and the participants that the recorder or the tape (end of tape or broken tape) has malfunctioned.

Recording Quality

High quality audio recording of judicial proceedings is difficult to quantify precisely. Basically, audio fidelity is the degree to which original sound is faithfully and accurately reproduced. For judicial purposes, adequate audio quality is necessary to clearly record court proceedings with negligible distortion, whether caused by the machine or by extraneous noises. The audio quality necessary for recording verbatim statements in court does not require the same high fidelity as recording music for home entertainment or hi-fi equipment.

Many audio components affect audio quality.

Improvements in one particular capability are sometimes achieved at the expense of another, for example, increasing the frequency range may cause a deterioration in the signal-to-noise (S/N) ratio.

Unfortunately, manufacturers do not measure or report audio fidelity measurements such as frequency response range and signal-to-noise ratio in the same manner. Since manufacturers do not use comparable measurement techniques, a manufacturer's rating can be misleading or meaningless when compared to another manufacturer's. Courts should not use these measurements or ratings as the sole selection criteria. Judicial user experiences, vendor reputation, and, most critically, actual courtroom testing should be critical determinants.

Audio distortion. Distortion is the presence of extraneous sounds or harmonies which are not part of the original sound or statement. Technically, distortion is the difference in the sound wave form between the original signal wave form and the reproduced audio signal. Distortions are more critical with musical recording than courtroom (voice) recording.

The best recording equipment will always produce some distortion due to electronic or mechanical limitations in any audio recording system. Acceptable courtroom recorders will control and limit these distortions. Maximum distortion should be no more than 3 percent.

Frequency response range. Frequency response range of a recorder represents the range from the lowest (bass voice) to the highest (treble tones) pitched sound that can be recorded. The frequency response range is expressed in cycles per second (Hz). Courtroom recording equipment need only accurately record sound in the human voice range (100-6,000 Hz)—minimum acceptable range is 200 to 4000 Hz—and not of the musical fidelity range (50-20,000 Hz). Vendors should meet the specified frequency response range for both record and playback modes at the normal operating tape speed. The frequency range reported should be calibrated at ± 3.0 decibel (db) variation. To ensure that voice levels will be properly recorded, a court should test any proposed audio recording system with individual voices from the entire range.

Signal to noise ratio. By limiting the frequency response range, the manufacturer can provide improvements in the signal-to-noise ratio. This is a measure of the ratio of the desired audio signal compared to the extraneous noises caused by the recorder or its auxiliary components. If this ratio is too low, background noises due to hum (low frequency noises) or hiss (high frequency noises) can interfere with audibility of the voices being recorded. An acceptable rating is a minimum of 35 db, but a higher rating is desirable. Since manufacturers do not always calibrate or use the same standard for determining a signal-to-noise rating, courts must carefully compare vendor measurements and claims.

Cross talk. Multi-track recorders can create undesirable cross-talk. Cross-talk occurs when there is sound leakage between two channels, that is, when a statement recorded on one channel can be heard during playback on another channel. Cross-talk calibration must be above 32 db.

Transcribers

A transcribing machine must be compatible with the recording machine so that the recorded tape can be played back properly and transcribed efficiently. Any machine used as a transcriber must have a foot control with forward, reverse, and stop modes and variable speed control. Controls which are optional include automatic back-up and speech compression.

The transcriber machine can either be the recording machine containing a few transcriber components or a transcriber containing features compatible with the recording machine, including the same tape medium, the same track specifications (equivalent track width and track spacing), the same tape speed, the same type of index counter and calibration, appropriate listening devices (both an internal loud speaker and an output signal connected to a headset), tone and volume control, speed control and separate audio

monitoring for each track or any combination of recording tracks.

Transcriber machines are useful when courtroom recorders are utilized daily and when transcript preparation is primarily done by court personnel during normal court work hours. An advantage of having a recording machine as a transcriber is that it can replace a malfunctioning recording machine. The best strategy depends upon the funds available for equipment expenditures, the personnel assigned to transcribe the tape, the location of transcription personnel in relation to the recording system, the transcript volume, and the availability of the recording machines for transcription.

If a recording machine is used to transcribe tapes, the machine must contain an indicator switch or mechanism to prevent accidental erasure or recording over while transcribing. If a transcriber machine is used, it should not contain a record or erase head.

ACCESSORY EQUIPMENT

Bulk Erasers

Erase heads should be excluded or removed from all court recorders and transcribers. A bulk eraser, a special electromagnetic device generating a strong magnetic field, can be purchased inexpensively (approximately \$25 to \$50) that can quickly erase any recorded tape within 5 to 15 seconds. The bulk eraser provides a reliable method of completely erasing a recorded tape and preventing accidental erasure on a recorder or transcriber machine.

Duplicators

In some jurisdictions, lawyers or other government agencies may request a copy of the audio recording of the court proceeding. There are two alternatives: (a) If the request is made before the court proceeding begins, another recording device can be attached to the main recorder for simultaneous recording. The requesting party could be permitted, upon proper notification of the court, to attach his

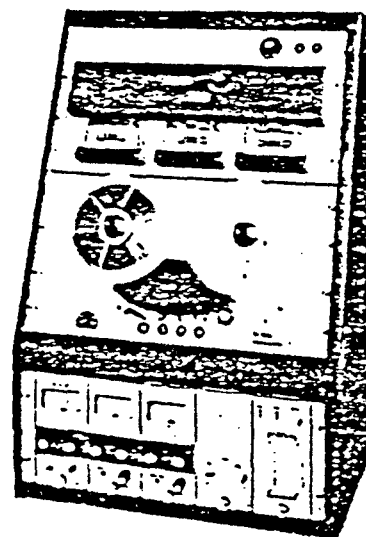


Figure 5.3 Duplicator.

own recording device and provide his own tapes to obtain duplicate recorded copies of the proceeding; and (b) if requests are received after the testimony has been recorded, a duplicator machine can be used.¹

A duplicator is a high-speed audio reproduction system

¹Another alternative, although cumbersome and time-consuming, is to connect two standard recorders together to reproduce a second tape. If requests for duplicate tapes are infrequent (a few times a year) this alternative is feasible.

which permits the original tape recording to be duplicated onto one or several tapes in minutes. Duplicators are available to copy one tape recording onto another tape such as cassette to another cassette, or from a reel to a cassette.

There is little need for duplicators in most jurisdictions; however, some jurisdictions may provide audio duplicating service instead of a typed manuscript to requesting parties or to appellate courts. Other courts may contract with an independent transcription service to produce additional copies.

RECOMMENDATION 2

COURTROOM CLERKS SHOULD MAINTAIN A STANDARD LOG OR INDEX OF ALL RECORDED PROCEEDINGS.

The tribal court maintains a cassette recording of all courtroom proceedings. The recording equipment is operated by a clerk who also takes selective notes during the proceedings. However, the types of notes vary and no effort is made to correlate events or witnesses to a location on the cassette. The only information recorded on the cassette is the date. These practices make it difficult for the courtroom clerk to locate a particular case or proceeding at a later date.

When a judge wishes to hear a portion of a recording or a defendant asks for a partial transcript, the clerks must listen to the whole tape until the needed testimony is found. This practice requires considerable clerical time. The use of a standard log (see, Charts 4 and 5 for proposed forms) to record the location of an event or testimony on the cassette would speed up the process of locating a specific item.

The proposed general courtroom log (Chart 4) was reviewed with the chief court clerk during project staff's site visit. She was provided with a rough format of the form and felt the new form could be implemented immediately. The ease and accuracy of locating information made available by the court log eliminates the need for a court stenographer. (See also NCSC report on Audio/Video Technology for Courts, Appendix A.)

Chart 4 (Courtroom Log) is a general log that would be used each day to record arraignments, sentences and trials. At the beginning of a court session the clerk would record the general information at the top of the form. As a case was heard, the clerk would then record the time, case name/number, proceeding, and tape footage (from the cassette).

An additional more detailed log [see, Chart 5 (trial log)] would be prepared for each trial. The top portion of the trial log would be the proper name of all persons appearing before the court. Thereafter, the clerk need only record an abbreviation to identify each speaker or event. This form is two sided and should be sufficient to index all proceeding for each trial.

At the end of each day, the courtroom clerk should insert the logs for that day in a three ring binder. If there is a need to transcribe a proceeding, the clerk need only locate the appropriate numbered tape used for that day and fast forward the tape to the noted footage for the required proceeding. The court will have to sequentially number and store all used tape for future retrieval. These tapes cannot be erased or reused until the required retention period has passed.

RECORDED NAME

[illegible]

CIVIL COURT LOG

RECORDED NAME

[illegible]

Small Claims

Recorder

[illegible]

MENOMINEE TRIBAL COURT
TRIAL LOG

CASE NAME _____ DATE _____

CASE No. _____ TAPE No. _____

JUDGE _____ RECORDER _____

PROS. / PLAINTIFF

DEFENDANT

ATTORNEY: _____

WITNESS I _____

WITNESS II _____

WITNESS III _____

WITNESS IV _____

[illegible]

MENOMINEE TRIBAL COURT
COURT RECORD

Case No. _____

IN THE MATTER OF _____ VS. _____

DATE: _____ TIME: _____ JUDGE _____

APPEARANCES: _____

TYPE OF HEARING: _____

PLEA: Admit _____ Deny _____ No Contest _____ Stipulation _____

DISPOSITION _____

REMARKS:

CHAPTER 12: Jury System

- A) Manual
- B) Juror Guide

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.

JUROR ARRAY

4

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:

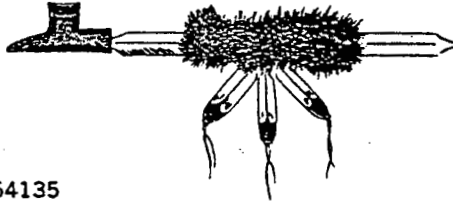
- ☐ I am not a reservation resident. Give present address.

- ☐ 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:

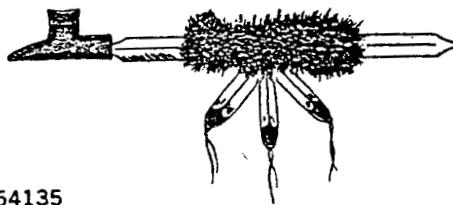
Your request for excuse from jury duty in the Menominee Tribal Court has been granted.

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.

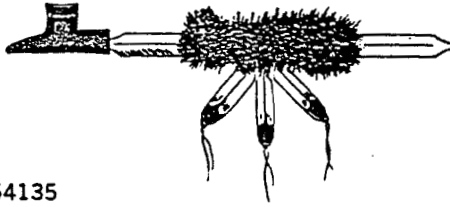
Sign here _____

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.

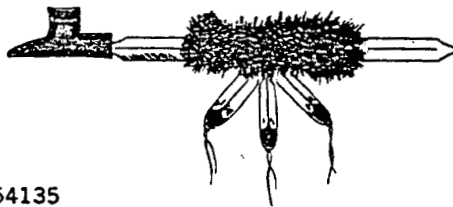
j. Clerk complete JUROR CERTIFICATES

- (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 yourselves 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.

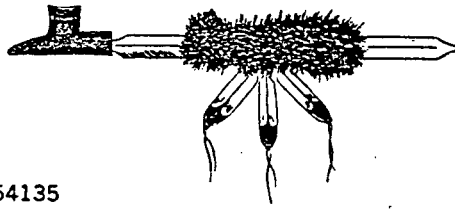
NOTE: Polling of the jury may take place, upon request of the defendant, and each juror will respond by "Yes" or "No" to the following question from the Court:

"..... 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?) _____

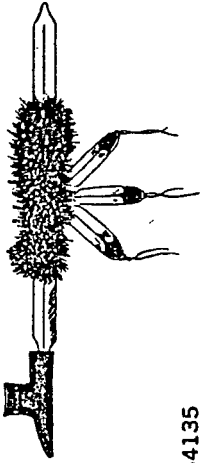
7. When you were first called to be a juror, what was your reaction?
_____ Pleased _____ Neutral _____ Displeased

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?

Menominee Indian Tribe of Wisconsin



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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:

<u>Not Guilty</u>	<u>Guilty</u>	<u>Charge(s)</u>
_____	_____	Count 1 _____
_____	_____	Count 2 _____
_____	_____	Count 3 _____
_____	_____	Count 4 _____

Juror Signatures

Dated: _____

Foreman _____

MENOMINEE TRIBAL COURTS

JURY VERDICT

(Civil Case)

Case No. _____

Plaintiff

vs.

Defendant

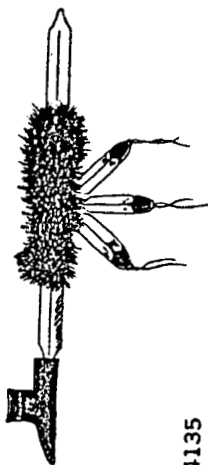
The Jury finds for the _____ and
finds damages in the amount of _____.

Juror Signatures

Dated: _____

Foreman

Menominee Indian Tribe of Wisconsin



P. O. Box 429
Keshena, Wisconsin 54135

Telephone
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 ($.20 \times$ 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 Miles Roundtrip AMOUNT TO BE PAID
Mileage Jury Fee Total

Date _____

Verified by: _____

Court Clerk

Approved by: _____

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 except 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.

Bailee: 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 Que 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 judicial 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.

Spriegl 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.

Venireman: 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.

APPENDIX B

ABA Draft Jury Management Standards

JURY MANAGEMENT STANDARDS

Preliminary Draft • December 1, 1981

JAD Committee on Jury Standards

Part A. Standards Relating to Selection of Prospective Jurors

Standard 1: OPPORTUNITY FOR JURY SERVICE

The opportunity for jury service should not be limited on the basis of race, national origin, gender, age, religious belief, income, occupation, or any other factor that discriminates against a cognizable group in the jurisdiction.

Standard 2: JURY SOURCE LIST

- (a) The names of potential jurors should be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the court jurisdiction.
- (b) The jury source list should be representative and should be as inclusive of the adult population in the jurisdiction as is feasible.
- (c) The court should periodically review the jury source list for its representativeness and inclusiveness of the adult population in the jurisdiction.
- (d) Should the court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action should be taken.

Standard 3: RANDOM SELECTION PROCEDURES

- (a) Random selection procedures should be used throughout the juror selection process. Any means may be used, manual or mechanical, which maintains the concept that each eligible and available person has an equal probability of selection.
- (b) Random selection procedures should be employed in:
 - (i) Selecting persons to be summoned for jury service;
 - (ii) Assigning prospective jurors to panels; and
 - (iii) Calling prospective jurors for voir dire.
- (c) Departures from the principle of random selection are appropriate to:
 - (i) Exclude persons ineligible for service in accordance with standard 4;
 - (ii) Excuse or defer prospective jurors in accordance with standard 6;
 - (iii) Exercise challenges for cause and peremptory challenges in accordance with standards 8 and 9; and
 - (iv) Provide all prospective jurors with an opportunity to be called for service and assigned to a panel before others are called or assigned a second time, in accordance with standard 13.

Standard 4: ELIGIBILITY FOR JURY SERVICE
All persons should be considered eligible for jury service except those who:

- (a) Are less than eighteen years of age, or
- (b) Are not citizens of the United States, or
- (c) Are not residents of the jurisdiction in which they have been summoned to serve, or
- (d) Are not able to communicate in the English language, or
- (e) Have been convicted of a felony and have not had their civil rights restored.

Standard 5: TERM OF SERVICE

The time that persons are called upon to devote to jury service should be the shortest period consistent with the needs of justice.

- (a) A term of service of one day or the completion of one trial, whichever is longer, is recommended. However, a term of one week or the completion of one trial, whichever is longer, is acceptable.
- (b) Persons should ordinarily not be required to remain available for jury service for longer than two weeks. In areas with few jury trials it may be appropriate for persons to be available for service over a longer period of time.

Standard 6: EXEMPTION, EXCUSE AND DEFERRAL

- (a) All automatic excuses or exemptions from jury service should be eliminated.
- (b) Eligible persons who are summoned may be excused from jury service only if:
 - (i) 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
 - (ii) 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 two years preceding their summons, and they are excused by a judge or duly authorized court official.
- (c) Deferrals of jury service for reasonably short periods of time may be permitted by a judge or duly authorized court official.
- (d) Requests for excuses and deferrals and their disposition should be written or otherwise made of record. Specific uniform guidelines for determining such requests should be adopted by the court.

Part B. Standards Relating to Selection of a Jury

Standard 7: VOIR DIRE

A voir dire process should be used to elicit from persons on the jury panel information necessary to determine their suitability to serve as jurors on a particular case.

- (a) To reduce the time required for voir dire, basic background information regarding persons on the jury panel should be made available in writing to counsel for each party on the day on which jury selection is to begin.
- (b) The trial judge should conduct the initial voir dire examination. Counsel should be permitted to question panel members under the supervision of the judge.
- (c) Voir dire examination should be limited to subjects germane to the exercise of challenges for cause and peremptory challenges. The judge should ensure that the privacy of prospective jurors is not invaded unnecessarily during the voir dire examination, and that the questioning by counsel does not exceed the limited purpose of the voir dire process.
- (d) In criminal cases, the voir dire examination should always be held on the record. In civil cases, the voir dire examination should be held on the record unless waived by the parties.

Standard 8: REMOVAL FROM THE JURY PANEL FOR CAUSE

If the judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, that individual should be removed from the panel. Such a determination may be made on motion of counsel or on the judge's own initiative.

Standard 9: PEREMPTORY CHALLENGES

- (a) The number of, and procedure for, exercising peremptory challenges should be governed by court rule or statute.
- (b) Peremptory challenges should be limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury.
- (c) In civil cases, the number of peremptory challenges should not ordinarily exceed three for each side.
- (d) In criminal cases, the number of peremptory challenges should not ordinarily exceed:
 - (i) Ten for each side when a death sentence may be imposed upon conviction;
 - (ii) Five for each side when a sentence of imprisonment for more than six months may be imposed upon conviction; and
 - (iii) Three for each side when a sentence of incarceration of six months or fewer, or when a penalty not involving incarceration may be imposed upon conviction.

- (e) One additional peremptory challenge should be allowed to each side in a civil or criminal proceeding for every two alternate jurors to be seated.
- (f) The trial judge should be empowered to allow additional peremptory challenges when special circumstances justify doing so.
- (g) All peremptory challenges should be exercised following the completion of the voir dire examination. Counsel should exercise their strikes in an alternating manner out of the hearing of the panel.

Part C. Standards Relating to Efficient Jury Management

Standard 10: ADMINISTRATION OF THE JURY SYSTEM

The responsibility for administration of the jury system should be vested exclusively in the judicial branch of government.

- (a) All procedures concerning jury selection and service should be governed by court rules and regulations, promulgated by the state's highest court or judicial council, which are uniformly applicable throughout the court system.
- (b) A single unified jury system should be established in any community in which two or more courts, whether of the same or of differing subject matter or geographic jurisdiction, conduct jury trials.
- (c) Responsibility for administering the jury system should be vested in a single administrator acting under the supervision of the presiding judge of the court.

Standard 11: NOTIFICATION AND SUMMONING PROCEDURES

- (a) The notice summoning a person to jury service and the questionnaire eliciting essential information regarding that person should be:
 - (i) Combined into a single document;
 - (ii) Phrased so as to be readily understood by an individual unfamiliar with the legal and jury systems; and,
 - (iii) Delivered by first class mail.
- (b) A summons should clearly explain how and when the recipient must respond and the consequences of a failure to respond.
- (c) The questionnaire should be phrased and organized so as to facilitate quick and accurate screening, and should request only that information essential for:
 - (i) Determining whether a person meets the criteria for eligibility;
 - (ii) Providing basic background information ordinarily sought during voir dire examination; and

- (iii) Efficiently managing the jury system.
- (d) Policies and procedures should be established for enforcing a summons to report for jury service and for monitoring failures to respond to a summons.

Standard 12: MONITORING THE JURY SYSTEM

Courts should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:

- (a) The representativeness and inclusiveness of the jury source list;
- (b) The effectiveness of qualification and summoning procedures;
- (c) The responsiveness of individual citizens to jury duty summonses;
- (d) The efficient use of jurors; and
- (e) The cost effectiveness of the jury system.

Standard 13: JUROR USE

- (a) Courts should employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.
- (b) Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity in an efficient manner. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels.
- (c) Courts should provide all prospective jurors with an opportunity to be called for service and assigned to a panel before others are called or assigned a second time.

Standard 14: JURY FACILITIES

Courts should provide an adequate and suitable environment for jurors.

- (a) The entrance and registration area should be clearly identified and appropriately designed to accommodate the daily flow of prospective jurors to the courthouse.
- (b) Jurors should be accommodated in pleasant waiting facilities furnished with suitable amenities for occupying time when they are on duty but not serving on a trial.
- (c) Jury deliberation rooms should include space, furnishings and facilities commensurate with the business of reaching a fair verdict. The safety and security of the deliberation rooms should be ensured.
- (d) To the extent feasible, contact between jurors and the public should be minimized, and juror facilities should be arranged so as to enhance this goal.

Standard 15: JUROR COMPENSATION

- (a) Persons called for jury service should receive:
 - (i) A nominal amount in recognition of their out-of-pocket expenses for the first day they report to the courthouse; and
 - (ii) A reasonable fee for each succeeding day they report.
- (b) Such amounts and fees should be paid promptly.
- (c) State law should prohibit employers from discharging, laying-off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.

Part D. Standards Relating to Juror Performance and Deliberations

Standard 16: JUROR ORIENTATION AND INSTRUCTION

- (a) Courts should provide some form of orientation or instructions to persons called for jury service:
 - (i) Upon initial contact prior to service;
 - (ii) Upon first appearance at the courthouse;
 - (iii) Upon reporting to a courtroom for voir dire;
 - (iv) Following empanelment but prior to the presentation of evidence;
 - (v) During the trial;
 - (vi) Prior to deliberations; and
 - (vii) After the verdict has been rendered or when a proceeding is terminated without a verdict.
- (b) Orientation programs should be:
 - (i) Designed to increase prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors;
 - (ii) Presented in a uniform and efficient manner using a combination of written, oral and audiovisual materials.
- (c)
 - (i) The trial judge should give preliminary instructions directly following empanelment of the jury that explain the jury's responsibility and basic relevant legal principles.
 - (ii) Instructions on the law and on the appropriate procedures to be followed during deliberations should be recorded or reduced to writing and made available to the jurors during deliberations.
 - (iii) To the extent possible, all instructions should be phrased so as to be readily understood by individuals unfamiliar with the legal system.

(d) Before dismissing a jury at the conclusion of a case, the trial judge should:

- (i) Release the jurors from their duty of confidentiality;
- (ii) Explain their rights regarding inquiries from counsel or the press; and
- (iii) Either advise them that they are discharged from service or specify where they must report.

The judge may express appreciation to the jurors for their service, but if a verdict has been rendered, the judge should not express approval or disapproval of the jury's decision.

Standard 17: JURY SIZE AND UNANIMITY OF VERDICT

(a) Juries in criminal cases should consist of:

- (i) Twelve persons if a penalty of confinement for more than six months may be imposed upon conviction;
- (ii) At least six persons if the maximum period of confinement that may be imposed upon conviction is six months or less.

A unanimous decision should be required for a verdict in all criminal cases heard by a jury.

(b) Juries in civil cases should consist of no fewer than six and no more than twelve persons. It is acceptable to have either unanimous or non-unanimous verdicts in civil cases, provided however that a civil jury should not be authorized to return a verdict which is concurred in by less than three quarters of its members.

Standard 18: JURY DELIBERATIONS

Jury deliberations should take place under conditions and pursuant to procedures that are designed to enhance the rational decision-making process which the jury is charged to perform.

- (a) The judge should instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with Standard 16 (c).
- (b) The deliberation room should conform to the recommendations set forth in Standard 14 (c).
- (c) The jury should not be sequestered except under the circumstances and procedures set forth in Standard 19; and
- (d) A jury should not be required to deliberate after normal working hours unless the trial judge determines that evening or weekend deliberations are required in the interests of justice.

Standard 19: SEQUESTRATION OF JURORS

(a) The only purpose of sequestering a jury should

be to insulate its members from improper information or influences.

- (b) The trial judge should have the opportunity to grant or deny a motion to sequester a jury and to oversee the conditions of sequestration.
- (c) Standard procedures should be promulgated to make certain that:
 - (i) The purpose of sequestration is achieved; and
 - (ii) The inconvenience and discomfort of the sequestered jurors is minimized.
- (d) Training regarding the proper methods for complying with such procedures should be provided to personnel who escort, protect, and assist jurors during sequestration. Use of personnel actively engaged in law enforcement for escorting and assisting jurors during sequestration is discouraged.

CHAPTER 13: Full Faith/Credit

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
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(202) 246-0685

MODEL COURT DEVELOPMENT PROJECT

State Court Enforcement of
Indian Court Judgments

WISCONSIN



National Center for State Courts
Suite 2601
American National Bank Building
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St. Paul, Minnesota 55101

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INTRODUCTION

A statewide meeting was originally scheduled for November 6, 1981 in Wausau, Wisconsin. However, at the request of Justice Peters, chief judge of the Menominee Tribal Court, the meeting was cancelled.

In preparation for the planned meeting, James Farrar, project manager (NCSC), made numerous contacts with the Director of State Courts Office and the Attorney General's Office. Mr. Farrar worked closely with Mary Kay Baum, district court administrator, and John Niemesto, assistant attorney general. As a result of these contacts, the Wisconsin Supreme Court learned for the first time that there was proposed legislation being prepared by the Attorney General's Office that would provide full faith and credit to Indian court judgments in the state, and authorize the governor to negotiate reciprocal extradition agreements with tribes.

Ms. Baum was assigned to this project by the Director of State Courts and was instrumental in acquiring state court judges' support for the proposed legislation. The Director of State Courts Office distributed to state trial judges a copy of the proposed legislation and solicited their comments and recommendations (a summary of their comments is noted later in this report). Ms. Baum and state judges testified on behalf of the proposed legislation before an Assembly Committee on October 26, 1981. With minor amendments¹ the bills were

¹ One amendment did limit full faith and credit to judgments from the Menominee tribal court.

favorably reported out of committee and will be reviewed by a joint Indian Study Committee early in March of 1982. All indications are that the two (2) bills will be enacted before the Wisconsin Assembly adjourns in May of 1982.

It was because of these events and cooperative support from the Director of State Courts Office and trial judges that made a statewide meeting unnecessary.

Nevertheless, the following report for Wisconsin has been prepared to document the research developed for this project regarding the status of state court enforcement of Indian court judgments.

I. CURRENT STATUS OF STATE AND TRIBAL COURT JURISDICTION AND ENFORCEMENT OF JUDGMENTS

A. P. L. 280 Jurisdiction

The State of Wisconsin has civil and criminal jurisdiction under Public Law 280 over all Indian lands except the Menominee Reservation. The Menominees were restored to pre-Public Law 280 status by the Menominee Restoration Act of 1973.² Jurisdiction over the Menominee Reservation is now being exercised by the tribe and the federal government.

B. Full Faith and Credit and Extradition

The following proposed legislation and favorable reaction to it indicates that there is positive communication between the Menominee tribe and the state court system. As noted earlier, this proposed legislation has not as of the writing of this report been enacted. Nevertheless, all indications are that it will be passed during the assembly's present session. If this does occur, the State of Wisconsin will be a model example of what can be accomplished with cooperation.

OCT 23 1981

October 6, 1981 -- Introduced by Representatives METZ, SCHMIDT, ROGERS, SMITH, THOMPSON, COGGS, ULICHNY, BECKER, PLOUS, OTTE, CRAWFORD and KINCAID; cosponsored by Senators ADLEMAN, CHILSEN, OFFNER, McCALLUM and LORGE, by request of Attorney General Bronson C. La Follette. Referred to Committee on Criminal Justice And Public Safety.

- 1 AN ACT to create 976.07 of the statutes, relating to permitting the state
2 and Indian tribes to enter into extradition agreements.

Analysis by the Legislative Reference Bureau

The present statutes contain a uniform act relating to the extradition of witnesses in criminal actions and a uniform criminal extradition act. The acts specify the procedures whereby witnesses and alleged criminals will be turned over by the authorities in one state to another state which has demanded them. It is unclear whether the acts apply to extradition between states and Indian tribes.

Under this bill, the attorney general is authorized to negotiate agreements relating to the extradition of witnesses and criminals between this state and any Indian tribe in the state that exercises powers of self-government. Agreements must be submitted to the governor for approval and may be revoked by either party upon 6 months' written notice. Agreements must provide procedures to protect the constitutional rights of any person subject to extradition.

For further information, see the state and local fiscal estimate which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly,
do enact as follows:

- 3 SECTION 1. 976.07 of the statutes is created to read:
4 976.07 AGREEMENTS ON EXTRADITION; INDIAN TRIBES. (1) The attorney
5 general may negotiate an agreement with any Indian tribe within the
6 borders of this state exercising powers of self-government within the
7 Indian country as defined in 18 USC 1151 to which this state has

1 retroceded jurisdiction under 25 USC 1323, relating to the extradition of
2 witnesses, fugitives and evidence found within the respective
3 jurisdictions of this state and the tribe.

4 (2) An agreement negotiated under sub. (1) shall provide that a
5 court of the sending jurisdiction, before issuing an order for the
6 extradition of any person, shall:

7 (a) Notify the person named in the extradition warrant of the right
8 to a hearing and to legal counsel.

9 (b) Hold a hearing to determine:

10 1. That the person named in the warrant is the person charged with
11 the crime or is the witness demanded.

12 2. That there is probable cause to believe that the person named in
13 a criminal extradition warrant was present in the demanding jurisdiction
14 at the time of the alleged crime or that the person committed an act in
15 any place with intent to commit a crime in the demanding jurisdiction.

16 (c) If the person contests the legality of his or her arrest, allow
17 a reasonable time within which the person may apply for a writ of habeas
18 corpus.

19 (3) The attorney general shall submit agreements negotiated under
20 sub. (1) to the governor for approval. The governor shall have 30 days in
21 which to review the agreement. If the governor takes no action within 30
22 days, the agreement becomes effective.

23 (4) The attorney general shall provide technical assistance and
24 material support necessary to implement any agreement under this section.

25 (5) An agreement under this section may be revoked by the governor,
26 after consulting with the attorney general, or by the Menominee Tribal
27 chairperson upon 6 months' written notice to the other party unless a
28 different period of time is specified in the agreement.

1 (6) This section does not:

2 (a) Enlarge the criminal or civil jurisdiction of either the state
3 or a tribal government under federal law.

4 (b) Permit an Indian tribe to enter into agreements other than those
5 authorized by its organizational documents and laws.

6 (c) Permit this state or any of its political subdivisions to enter
7 into agreements prohibited by the state constitution.

8 SECTION 2. PROGRAM RESPONSIBILITY CHANGES. In the sections of the
9 statutes listed in Column A, the program responsibilities references shown
10 in Column B are deleted and the program responsibilities references shown
11 in Column C are inserted:

12	<u>A</u>	<u>B</u>	<u>C</u>
13	Statute Sections	References Deleted	References Inserted
14	15.251 (intro.)	none	976.07
15		(End)	

October 6, 1981 - Introduced by Representatives METZ, SCHMIDT, ROGERS, SMITH, COGGS, ULICHNY, OTTE, CRAWFORD, PLOUS, BECKER and KINCAID; cosponsored by Senators ADELMAN, CHILSEN, OFFNER and LORGE. Referred to Committee on Criminal Justice and Public Safety.

- 1 AN ACT to create 806.245 of the statutes, relating to extending full faith
2 and credit to the acts and court documents of Indian tribes.

Analysis by the Legislative Reference Bureau

This bill requires the courts of this state to give full faith and credit to properly authenticated acts of Indian tribal legislatures and acts, records, proceedings and judgments of tribal courts of record. It provides a procedure for authentication of the documents prior to admitting them as evidence in state courts and methods for determining whether a tribal court is a court of record and for determining the validity of tribal court judgments.

For further information, see the state and local fiscal estimate which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly,
do enact as follows:

- 3 SECTION 1. 806.245 of the statutes is created to read:

- 4 806.245 INDIAN TRIBAL DOCUMENTS: FULL FAITH AND CREDIT. (1)

- 5 Subject to subs. (2), (3) and (4), copies of judicial acts, records,
6 proceedings and valid judgments of Indian tribes of Wisconsin and acts of
7 a Wisconsin Indian tribal legislature shall have the same full faith and
8 credit in the courts of this state as do the acts, records, judicial
9 proceedings and judgments of any other governmental entity.

1 (2) To qualify for admission as evidence in the courts of this
2 state:

3 (a) Copies of acts of a tribal legislature shall be authenticated by
4 the certificate of the tribal chairperson and tribal secretary.

5 (b) Copies of records, judicial proceedings and judgments of a
6 tribal court of record shall be authenticated by the attestation of the
7 clerk of the court. The seal, if any, of the court shall be affixed to
8 the attestation, together with a certification by a judge of the court
9 that the clerk's attestation is in proper form.

10 (3) In determining whether a tribal court is a court of record, the
11 circuit court shall consider the following factors:

12 (a) Whether the court keeps a permanent record of its proceedings.

13 (b) Whether a transcript of the proceedings is available.

14 (c) Whether final judgments of the court are reviewable by a
15 superior court.

16 (d) Whether the court has the authority to enforce its own orders
17 through contempt proceedings.

18 (4) In determining whether a tribal court judgment is a valid
19 judgment, the circuit court shall examine the tribal court record to
20 assure that:

21 (a) The tribal court had jurisdiction of the subject matter and over
22 the person named in the judgment.

23 (b) The judgment is final under the laws of the rendering court.

24 (c) The judgment is on the merits.

25 (d) The judgment was procured without fraud, duress or coercion.

26 (e) The judgment was procured in compliance with procedures required
27 by the rendering court.

1 (5) No lien or attachment based on a tribal court judgment may be
2 filed, docketed or recorded in this state against the real or personal
3 property of any person unless the judgment has been given full faith and
4 credit by a circuit court under this section.

5 (End)

- State Court and Legislative Comments Regarding the Proposed Legislation.

There were 18 state judges who favored the proposed legislation (although 13 made no specific comments). Some of the comments received included the following:

- Tribal courts do a good job of administering justice.
- Full faith and credit would be consistent with tribes sovereign status.
- Honoring tribal court judgments would ease some of the litigation in state courts.

Only six (6) judges specifically opposed the proposed legislation. However, some judges, administrators and members of the legislative committee did submit the following comments:

<u>Number</u>	<u>Concerns</u>
7	Judgments should be honored only if from a court of record (i.e., there must be a transcript of testimony available for review).
4	Tribal judges should be required to be attorneys.
2	Are tribal courts able to handle civil cases (especially contract and tort cases)?
2	Jurisdictional issues should be resolved before state courts are required to enforce Indian court judgments.

<u>Number</u>	<u>Concerns</u>
1	Will U. S. Constitutional rights be secure in tribal courts?
1	Enabling legislation will have to be passed to authorize state courts to give full faith and credit to Indian court judgments.
1	Tribal courts must have adequate financial resources.

These comments do illustrate the typical concerns of state courts. Some of the comments demonstrate a lack of knowledge of Indian court operations and practices (especially the Menominee Tribal Court). Only with mutual training between the two (2) court systems can such misunderstandings and concerns be resolved.

● State Case Law Interpreting Full Faith and Credit

If the proposed legislation regarding full faith and credit for Indian court judgments is enacted, existing case law in Wisconsin interpreting the enforcement of sister state judgments would likely be applicable to Indian court judgments. The following Wisconsin Supreme Court decisions provide some guidance in predicting state court's interpretation of the proposed statute.

<u>Holding</u>	<u>Case Citation</u>
If the order is not final, FFC need not be accorded.	<u>Anderson v. Anderson</u> , 36 Wis. 2d 455, 153 N.W. 2d 627 (1967)

Holding

If the foreign court did not have jurisdiction, FCC need not be accorded. However, if the jurisdiction issue is fully litigated in the foreign court and is not subject to collateral attack in that state, then the forum state is bound by the judgment rendered.

Without proper service of process, FCC need not be accorded.

Errors of law committed by a foreign court may be considered in determining enforceability of foreign court judgment if due process requirements have not been made.

A valid foreign judgment will not be denied recognition because of errors of fact and law in proceedings before judgment.

Case Citation

Hansen v. McAndrews, 49 Wis. 2d 625, 183 N.W. 2d 1 (1971)

Hansen v. McAndrews, supra

Hansen v. McAndrews, supra

Weathered Misses Shop v. Coffey, 240 Wis. 474, 3 N.W. 2d 693 (1942).

C. Wisconsin Courts of Record

The courts of record in Wisconsin are not enumerated by statute or in the Constitution. However, Wisconsin Statutes Annotated § 757.01 defines the powers of courts of record.

Courts of record may issue process of subpoena, administer oaths to witnesses where it may be necessary in the exercise of the powers and duties of the court, devise and make such writs and proceedings as may be necessary to carry into effect the powers and jurisdiction possessed by them.

Wisconsin Statutes Annotate in § 800.13 states that municipal courts are not courts of record.

D. Uniform Enforcement of Foreign Judgments

In 1965 the State of Wisconsin enacted its own Uniform Enforcement of Foreign Judgments Act. Section 806.24(1) of the Act defines foreign judgment as "any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit." Section 806.24(2) provides for enforcement of foreign judgments by filing an authenticated copy with the clerk of the circuit court of any county. There have been no determinations whether these provisions apply to Indian court judgments.

The State Attorney General's Office referenced some of the provisions of this Act as "Drafter's Note(s)" to the proposed full faith and credit legislation. The following is a copy of those comments.

DRAFTER'S NOTE: 1. You may want to consider the suggestion of the National Conference of Commissioners on Uniform State Laws for dealing with the enforcement of tribal court judgments:

UNIFORM FOREIGN MONEY-JUDGMENTS
RECOGNITION ACT -- 1962

This act is designed to govern the treatment accorded in state courts to judgments of courts not in the United States. The Act should not be altered to govern actions on judgments of Indian tribal courts, which should not be treated like courts of "foreign nations". Their judgments should come under the Uniform Enforcement of Foreign Judgments Act, which covers treatment of judgments of courts within the United States. Consistent with this conclusion, the only recommended change would be in Section 1 (1):

(1) "Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, Indian tribe exercising powers of self-government within a reservation, or the Panama Canal Zone

If you choose to amend the uniform act, s. 806.24 of the statutes, sub. (2) of this draft should be created, possibly in ch. 909, to establish the method of authenticating tribal documents.

2 Subsection (3), as drafted, gives state courts discretion to grant full faith and credit to the documents of tribes other than the Menominee. Does this meet with your intent, or do you want to require courts to grant full faith and credit to any tribe with an established court system?

3 Is sub. (3) intended to apply only to Wisconsin Indian tribal documents or to those of any Indian tribe?

E. Comity³

Under principles of comity, Wisconsin courts will generally recognize a foreign decree unless contrary to the law, morals or policy of the state. "By virtue of the doctrine of comity, rights acquired under statute enacted or judgment rendered in one state will be given force and effect in another unless, as said, against policy or laws of the state, prejudicial to the interests of its citizens or against good morals and natural justice; comity being a rule of practice, however, and not a rule of law."

Hughes v. Fetter 257 Wis. 35, at 39, 42 N.W. 2d 452 (1950), rev'd other grounds 34 1 U.S. 609. It was said in Estate of Steffke 65 Wis. 2d 199, 222 N.W. 2d 628 (1974), citing Leflar, American Conflicts Law: "When a court is not bound by constitutional compulsion, it may properly employ local public policy as a reason for refusing to entertain suits on objectionable foreign causes of action." 65 Wis. 199, at 202. It is difficult to see how in a Wisconsin enforcement proceeding the state could object on public policy grounds to the direct action in tribal court, since such action would also be available in Wisconsin state courts. However, Leflar, supra at p. 172 points out that "An American court can deny effect to a foreign judgment because it does not like the kind of service employed even though the service was valid." This view must be tempered with the language in Hilton v. Guyot, supra, to the effect that mere procedural differences are insufficient reason to deny effect to a foreign judgment.

³ Excerpt from research memorandum entitled State Court Enforcement of Tribal Laws and Judgments, prepared by Fran Wells, University of Wisconsin, Madison, Indian Law Center, dated August 22, 1980.

APPENDIX A
DIRECTORY OF TRIBAL COURT OFFICIALS*

*Taken from Indian Court Judges Directory, published by
National American Indian Court Judges Association (May 1981).

Menominee

Box 377, Keshena,
WI 54135
(715) 799-3348

Supreme Court:

Chief Justice Wilmer Peters

Associate Justices: Joseph Lawe
Hilary Waukau

Associate Judges: Louis Hawpetoss
Sarah Skubitz

Tribal Chairman Gordon Dickie, Sr.

Red Cliff

Box 529, Bayfield,
WI 54814
(715) 779-5805

Chief Judge John Daley

Associate: Henry Buffalo

Tribal Chairman Thomas Gordon

Wisconsin Agency
Lac Courte Oreilles

Rt 2, Hayward, WI
54843
(715) 634-8934 x22

Chief Judge Edward T. Barber

Tribal Chairman Richart St. Germaine

Bad River

Mashkishi Center
Rt 2, Ashland, WI
54806
(715) 682-4212

Chief Judge Edward T. Barber

Associate: Jerome Arbuckle

Tribal Chairman Sam Livingston

APPENDIX B

BIA AND DEPARTMENT OF THE INTERIOR

FEDERAL DIRECTORY

Department of the Interior

Wisconsin

Office of the Field Solicitor
Department of the Interior
686 Federal Building
Fort Snelling
Twin Cities, Minnesota 55111
612/725-3540

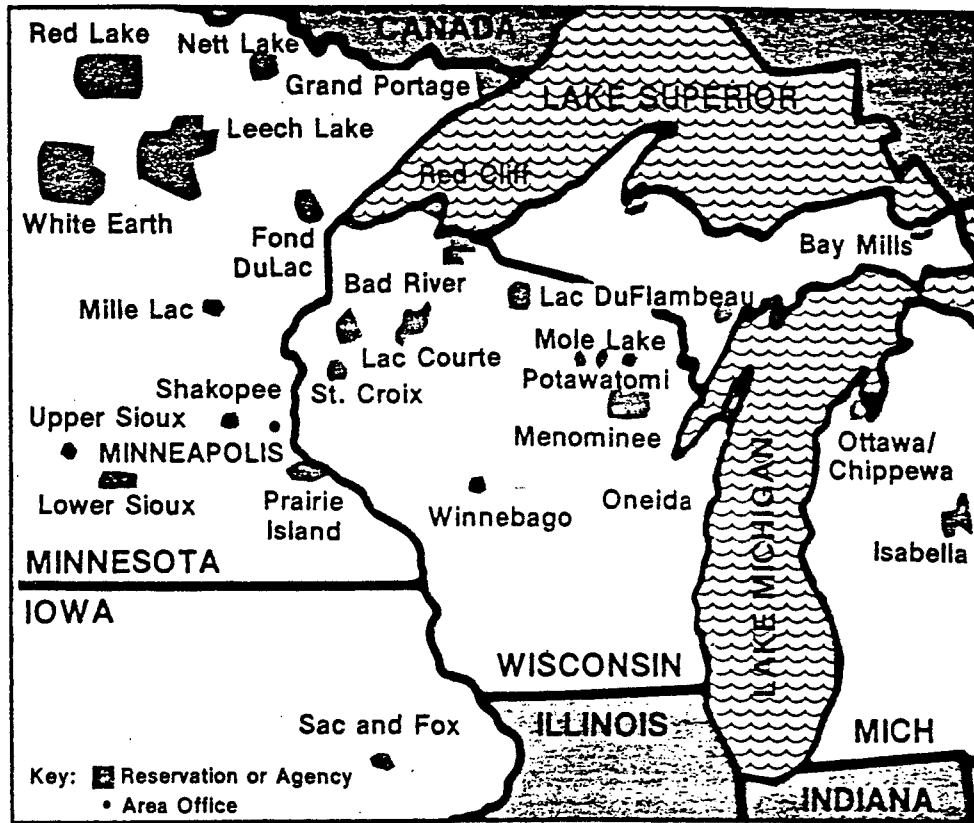
Bureau of Indian Affairs

• Area Officer

Minneapolis Area Office
15 South 5th Street
Chamber of Commerce Building
Minneapolis, Minnesota 55402
612/349-3591

• Agency Office

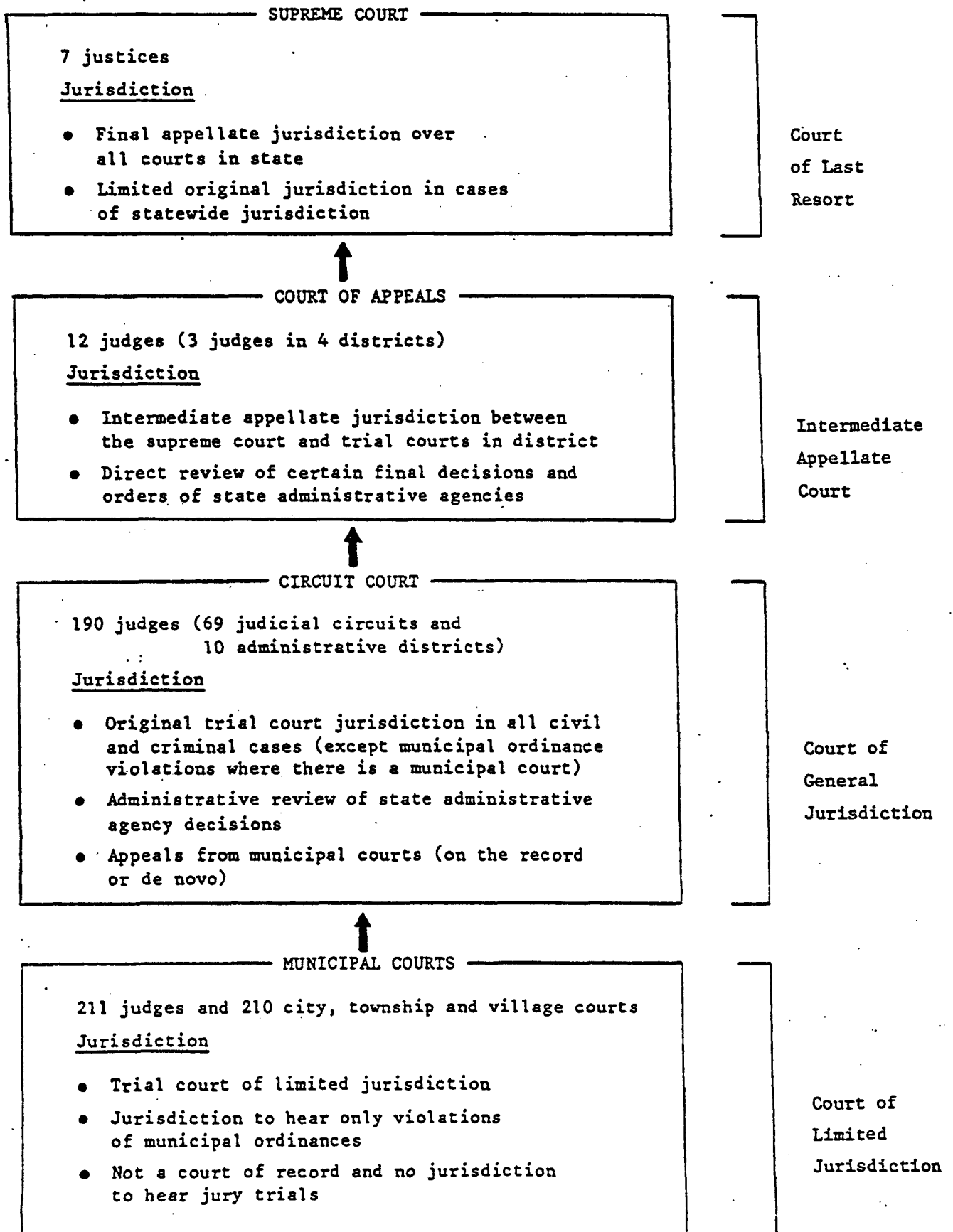
Great Lakes Agency
Ashland, Wisconsin 54806



APPENDIX C
WISCONSIN STATE COURT SYSTEM*

* Taken from SJIS State of the Art 1980, prepared by the National Center for State Courts under a federal grant awarded to the National Center by the Systems Development Division, currently the Bureau of Justice Statistics (BJS) part of the U. S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (November 1980).

WISCONSIN COURT SYSTEM



SUPREME COURT

The Supreme Court, consisting of seven justices elected to statewide ten year terms, has original jurisdiction in certain cases of statewide concern, and since August 1978, discretionary appellate jurisdiction of all others arising under Wisconsin law. The Court considers petitions to review decisions of the Court of Appeals, petitions to bypass the Court of Appeals and certifications from that court. It is the highest tribunal for actions commenced in the state courts, except where a federal question allowing an appeal to the U. S. Supreme Court is raised. It is the final authority on the State Constitution.

The Constitution also provides that the Supreme Court has the superintending and administrative authority over all courts in the state. The Chief Justice is the administrative head of the state judicial system and exercises this authority both directly and through the Director of State Courts pursuant to procedures adopted by the Supreme Court.

Director of State Courts

The Director of State Courts is appointed by, and serves at the pleasure of, the Supreme Court. At the direction of the Chief Justice, the director administers the non-judicial business of the judicial system through the appointed chief judges and staff.

The specific functions of the Director, as set out by the Supreme Court Rule, are:

Supervision of state level court personnel

Development and supervision of the budget for the court system

Monitoring of legislation

Coordination of public information

Development and maintenance of a court information system

Management of judicial education programs

Coordination of interdistrict assignment of active and reserve judges

Development and supervision of judicial planning and research

Consultation to Supreme Court on matters relating to improvements within the system

Direction of fiscal matters, space allocation and equipment

Collection, compilation and utilization of judicial system statistics

Supervision of Law Library and Clerk's Office for the Supreme Court and Court of Appeals

In addition, the director staffs the Administrative Committee of Courts, the Judicial Conference and its several sections and committees.

The Director is also responsible for administering the Patients Compensation Panels created under Chapter 655. The Director administers procedures for filing claims of injury or damage resulting from alleged malpractice of providers of health services or for alleged breaches of contract. Funds to operate the Patients Compensation Panels are generated from an annual assessment of health care providers which are included within the scope of Chapter 655.

Board of Attorneys Professional Responsibility

The Board of Attorneys Professional Responsibility assists the Court in its constitutional responsibility to supervise the practice of law and protect the public from professional misconduct by members of the bar. The enforcement procedure of the Board of Attorneys Professional Responsibility is used when a complaint is filed against an attorney by the Board of Professional Responsibility. A referee is then appointed by the Supreme Court to hear evidence, make findings, and enter an order dismissing the complaint or imposing discipline. The Board is funded by an assessment of Wisconsin practicing attorneys which is collected by the State Bar of Wisconsin. The enforcement program is state funded.

The Board of Attorneys Professional Competence

The Board of Attorneys Professional Competence was created to implement the mandatory continuing legal education requirements for Wisconsin lawyers. The Board also administers the State Bar examinations, and processes all requests for admission

to the State Bar on foreign license and readmission.

The Board is funded by an assessment of the members of the State Bar of Wisconsin and a fee charged the persons applying for bar admission.

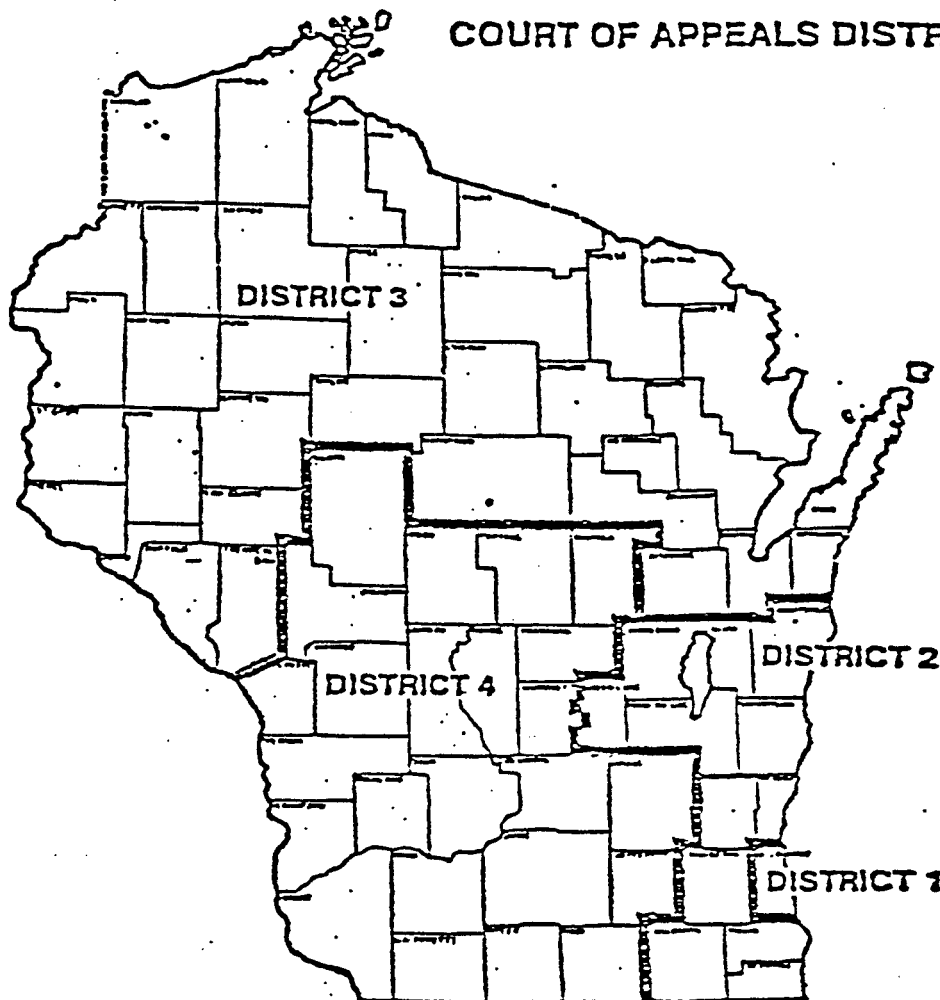
COURT OF APPEALS

The Court of Appeals consists of 12 judges elected for six year terms. The Court is divided into four panels of three judges each, located in Milwaukee, Waukesha, Wausau, and Madison, and is supervised by a Chief Judge appointed by the Supreme Court.

The Court of Appeals has original jurisdiction to issue prerogative writs and appellate jurisdiction over all final judgments and orders of the circuit courts which can be appealed as a matter of right.

The Court's three-judge panels sit in 11 locations throughout the state. Appeals requiring the consideration of only one judge are typically heard in the county in which the action originated. The Court of Appeals provides a written opinion containing a summary of the reasons for decisions made by the Court.

COURT OF APPEALS DISTRICTS



WISCONSIN CIRCUIT COURT

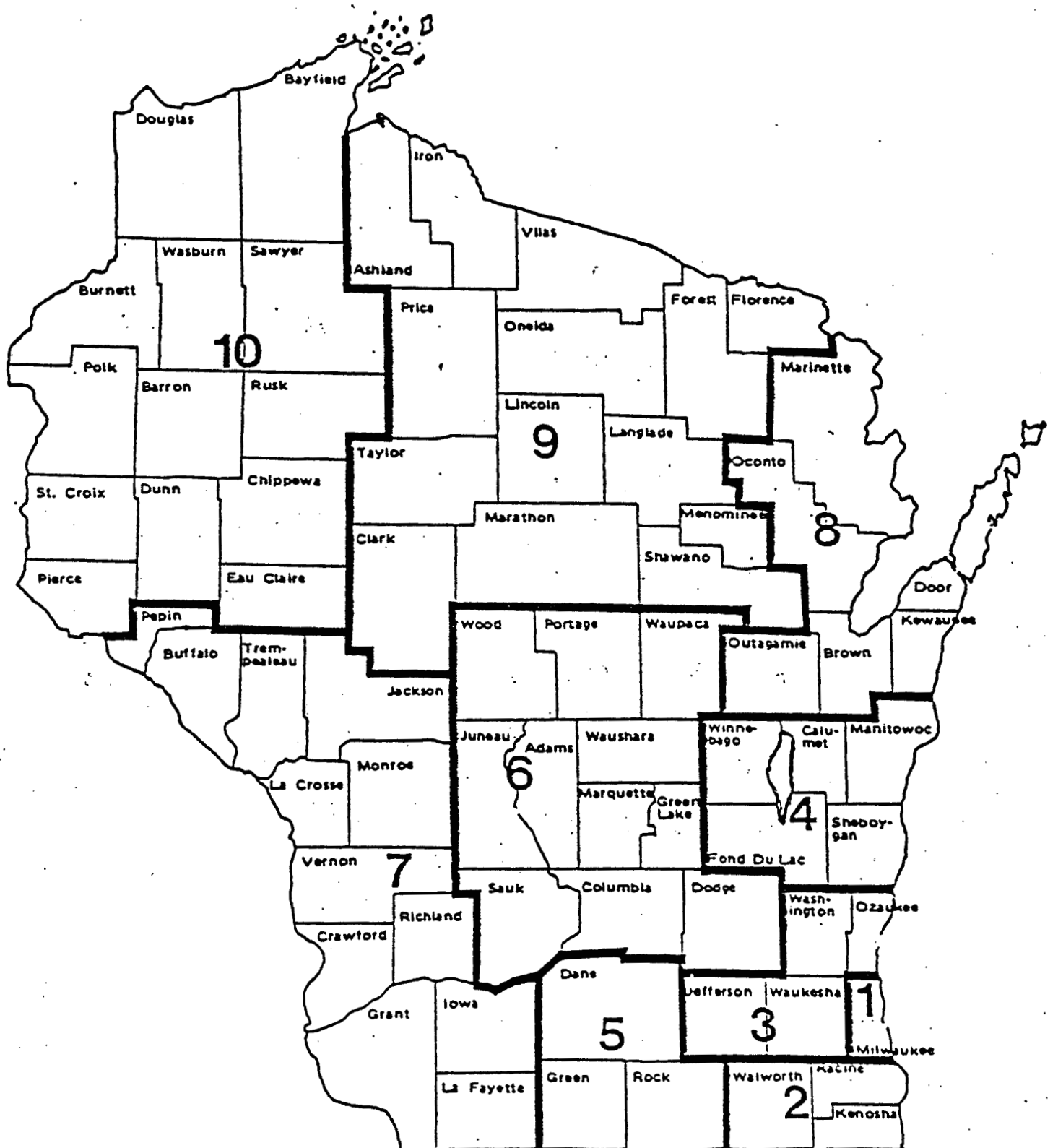
The Wisconsin constitution provides for a single-level general trial court called the circuit court. The court is divided into 69 judicial circuits, one for each county with the exception of three (3) circuits that include two (2) counties (i.e., Pepin/Buffalo, Menominee/Shawano, and Forest/Florence counties). The court has the jurisdiction to hear all civil and criminal trials, with the exception of violations of municipal ordinances in those jurisdictions where a municipal court has been established to handle these matters. The circuit court hears municipal ordinance violations for municipalities that have not established a municipal court. The court hears appeals from the municipal court on the record or by de novo trial without a jury. Administrative review of state administrative agency decisions and orders are heard in the circuit court.

Circuit judges are elected on a non-partisan ballot for a six-year term. The governor fills all judicial vacancies by appointment. In counties having a population of 100,000 or more, the county board may appoint one or more full-time court commissioners who must be an attorney licensed to practice law in Wisconsin. In counties of 100,000 to 500,000 populations the county board may create an office of probate court commissioner. In counties having a population of 500,000 or more, the chief judge shall appoint and may remove a probate court commissioner. Each county has an elected clerk of court.

The salaries and per diem expenses of circuit judges and their court reporters are funded by the state. All other operating expenses are funded by the county. Fines, fees and costs collected by the circuit clerk of court's office are deposited with the county. Portions of the fines and fees are distributed to the state or municipalities. The remaining monies are general revenue for the county.

The state is divided into ten judicial administrative districts for the purpose of administering the court system. Each district includes all the circuit courts within the district and has a designated chief judge appointed by the supreme court. The chief judge is the administrative chief of the judicial administrative district and has the power to assign judges and manage caseflow throughout the district and to supervise personnel and financial planning in the district. The chief judge exercises the full administrative power of the judicial branch subject to the administrative control of the supreme court.

WISCONSIN
Judicial Administrative Districts



FULL FAITH AND CREDIT

Recently, the state of Wisconsin passed legislature permitting state courts to enforce Indian court judgments if Indian courts will grant full faith and credit to state court judgments and meet certain other requirements. The tribal legislature has not yet authorized the tribal courts to enforce state court judgments. The Wisconsin State Attorney General's office has indicated that it would prefer that tribal policy on enforcing state court judgments be clearly defined by the tribal legislature rather than left to judicial decision to avoid inconsistent and conflicting decisions in implementation.

The state legislation on full faith and credit also requires that there be a system of appeals in the tribal court. WSA § 806.245 (3)(c) and (4)(f). As noted earlier in the discussion of appellate practices, the court and tribe must take some action to insure the availability of appeals in all cases.

RECOMMENDATION

The tribal legislation in cooperation with the state attorney generals office should determine all possible objections by the state courts to enforcement of Indian court judgments and attempt to deal with them by tribal legislation, rather than leaving policy to be made piece-meal by judicial decision. The court/legislature must also assure the state that there is in fact a working appeals system (see section on Appeals).

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."

STATE OF WISCONSIN

1981 Assembly Bill 824

Date published*: May 6, 1982

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: 9/12/81

CHAPTER 14: Probation (Reserved)

CHAPTER 15: Appeals (Reserved)

TASK VI

Comparison of Court Practices with Tribal Code, Court Rules and BIA Requirements

During the management audit of March, 1982, National Center staff noted instances where tribal court practices did not conform with either the tribal code, court rules or BIA requirements. As a result of these observations, the National Center has been requested to examine the tribal code, court rules and BIA contract requirements for inconsistencies with court practices. To make these comparisons, the Center collected copies of professional codes, tribal codes, tribal constitution and BIA standard contracts and compared all existing practices with requirements contained in these items. In some cases there were, in fact, court practices that varied from specific requirements. In other cases, there were inconsistencies between requirements. The following sections describe variations or inconsistencies found as a result of the comparison and outlines suggested changes to make practices and requirements confirm.

A. APPELLATE SYSTEM

The Menominee Constitution Article V, § 1(b) and the Menominee Tribal Judiciary and Interim Code § 1-2-1 require the Menominee Supreme Court to be composed of three judges. At the time the National Center's Management Report was prepared, there were only two justices. Subsequent to the report, a third justice was appointed to the Supreme Court. Thus, the number of justices now conforms to the Menominee Constitution.

Previously, when no Menominee judges were available, Indian judges from other reservations were brought in to hear appeals. Menominee Tribal Judiciary and Interim Law and Order Code § 1-2-3 (3) specifically permits this practice in those cases where no tribal justices are available. This practice has been discontinued based on an outside judge's self disqualification

on the theory that bringing in outside judges was in conflict with the Menominee Constitution, Article V, § 4(a) which requires membership in the Menominee Tribe to be appointed to judicial office. Thus, the situation still exists where there may be times when there is in fact no appellate court in those cases where Menominee judges are disqualified or unavailable. The Center was informed that there is currently a case pending where only one Menominee judge will be eligible to hear the appeal. The Menominee Tribe must take some action to correct this situation in order to preserve the integrity of their court system and the appearance of justice.

RECOMMENDATION

The Menominee Tribe may wish to consider a couple of alternatives to insure that the appeals process will be available in all cases. The importance of the presence of a working appellate system cannot be exaggerated.

The easiest and simplest solution would be for the Supreme Court to overrule the trial court decision prohibiting the use of outside judges and permit outside judges to be brought in on a case by case basis as needed. The Menominee Constitution, Article III, § 2, states that the Supreme court shall be the final and supreme interpreter of the constitution, bylaws, and ordinances.

It is arguable that the lower court decision has no precedential value. If the decision is correct, and it is unconstitutional to bring outside judges in to hear cases in the Menominee court, then an outside judge has no binding authority in the Menominee court and any decisions by him are without precedential value, including the decision that outside judges cannot be brought in to serve in Menominee courts. Even assuming the decision is not correct, the issue has been raised as to that particular interpretation of the constitution and should be addressed by the court since it will undoubtedly be raised in the pending case where only one justice will be available to hear the appeal.

The constitutional provision in question is Article VI, §4(a) which requires membership in the Menominee tribe before a person can be "appointed to and hold the office of tribal judge". It is arguable that this requirement applies only to those persons appointed to a full time position as tribal judge. Outside judges who are called in on a case by case basis are not "appointed" and do not "hold office" as tribal judges and therefore the provision is inapplicable to them.

Secondly, to interpret Article V, § 4(a) to apply to outside judges makes it inconsistent with tribal code §1-2-3(3) which specifically permits the use of outside judges where Menominee judges are not available. There is no written history to the Menominee constitution, however, the fact that

the tribal legislature enacted a code section shortly after passage of the constitution permitting the use of outside judges seems to indicated that they did not interpret Article V, § 4(a) as being applicable to outside judges.

An alternative the tribe may wish to consider is amending the constitution and code to allow appeals to a single judge. Appeals to a single judge are a common state practice and satisfy notions of justice and fair play.

Finally, the tribe may wish to consider amending the code section allowing appellate judges to hear trials in the lower court. If the appellate judges were not allowed to hear trials in the lower court there would be far fewer disqualifications. In connection with this recommendation the tribe may wish to consider adding another trial judge, possibly on an intermittent basis only. He would be called only as needed.

The Supreme Court Chief Justice indicated that he thought there were some problems with procedural rules of the appellate court. In particular, he mentioned the length of time it took before an appeal could be heard. A brief review of the appellate court rules of procedure revealed that for a criminal appeal it could take 84 days from the date of sentencing before the appeal is heard by the Supreme Court. A civil appeal could take as long as 104 days from final judgment.

It is the Center's recommendation that the appellate rules be reviewed to identify those rules which create delay or other problems for the court and recommendations be made concerning them.

CHAPTER 16: Revenue and Accounting

- A) General Accounting Practices
- B) "One-Write" Accounting System
- C) Fees and Cost Schedule
- D) Garnishment Procedures

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. Supv., 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 protect 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.

ACCOUNTING

Menominee Tribal Judiciary and Interim Law and Order Code § 1-2-12 requires the clerk of court to collect and account for all fines, bail or bond money, fees or other charges which cause money to come to the court. Under current accounting practices at the court, the clerk is unable to comply with this code provision. The clerk of court currently has inadequate accounting records at the court.

The Bureau of Indian Affairs contract with the Menominee Tribe for the Judicial Services program in Article V, Attachment G, entitled "Part 200 - Special Conditions", 200.2 (B) requires the Menominee tribe to maintain a recordkeeping system which "reflects the amounts and sources of funds other than contract funds which may be included in the operation of a program."

Currently, the tribe is supplementing the tribal court budget out of tribal funds. Information provided to National Center staff indicated that approximately \$43,000 of tribal funds were used in fiscal years 1980 and 1981 to supplement BIA appropriations for the court. In addition, staff people are supplied to the court through the CETA program. Under the present accounting system, these additional court expenses were not clearly reflected. Requests for this information required accounting personnel to draw the data from a number of sources.

RECOMMENDATION

It is the National Center's opinion that the institution of the "one-write" accounting system will bring court practice into conformity with this code provision. The "one-write" system will create a journal for court money received and enable the court clerk to accurately and easily account for all court monies. Money received by the court will be identified by type and running totals for each type of money will be available.

The tribal court needs an accounting system which accurately reflects total expenses of the court. The National Center is currently developing standard revenue/expense accounting sheets which will reflect all revenue and expense information for the tribal court. BIA appropriations, tribal funds, staff salaries provided by CETA, and volunteer time will all be shown on a single sheet to provide a complete picture of court expenses. All money taken in by the court will be broken down by type and category to reflect totals of trust funds and court revenue, copies of draft revenue and expense standard forms are attached in this report. See Chart 1, Court Revenue and Chart 2, Menominee Tribal Court Budget.

MENOMINEE TRIBAL COURT

ACCOUNTING

Review of Accounting Procedures

The receipting and accounting procedures of the Clerk of the Menominee Tribal Court were reviewed. It appears that the procedures prescribed by the tribal accounting office are being followed in receipting for fines, fees, bonds support, and restitution. Their procedures are also being followed for transmittal of funds and disbursements.

The procedures used do not ensure positive control and accountability over all funds received. There are several deficiencies in the current system and opportunities for improving communications between the court and the tribal accounting office streamlining the paperwork. The deficiencies noted were primarily the following:

- 1) redundant paperwork in re-recording receipt information at the tribal accounting office;
- 2) No consistent system for tracking special accounts: support, restitution and multiple fine payments;
- 3) accounting for bond payments being held in trust pending the disposition of a matter before the court could be improved;
- 4) no ability of the court to account on an on-going basis for funds received in various categories.
- 5) cumbersome procedures requiring court orders to make routine disbursements, such as pass through support payments.
- 6) Unclear coding of receipts to insure crediting to the proper account.

The proposed modifications to the receipting and accounting procedures will alleviate some of the problems and ensure positive control over funds received, enable the tribe to collect statistical information on money collected and disbursed, and reduce the redundant and unnecessary paperwork in the court and tribal accounting office. The system will also reduce the amount of paperwork generated in the receipting activity, thereby reducing time requirements and minimize on the possibility of mistakes through transpositional and mathematical errors.

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) | | |
| Fees and charges | | |
| 5. Jury demand (CR 402) | | |
| 6. Due To: Courts (Misc. Receipts) CR 207 | } | Trust |
| 7. Cash bond (206) | | |
| 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.

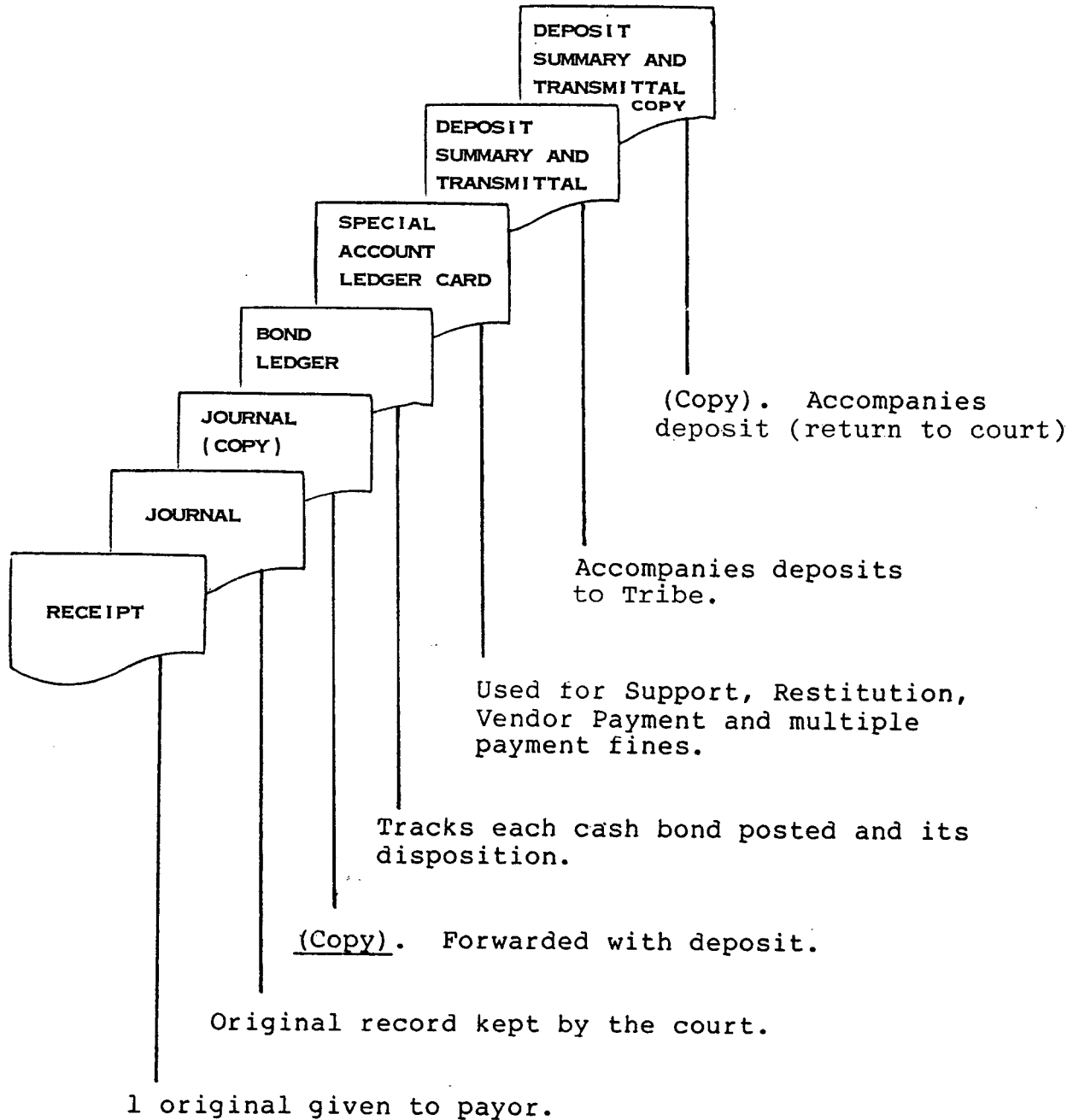
The first procedure, Receiving and Recording Funds, is accomplished through the use of a receipts journal, and ledger cards. The second procedure, Disbursements, is performed periodically throughout the month and involves the payment to individuals for such items as support payments, restitution, and 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.

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

The Menominee 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

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);

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: _____

- 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 or 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. _____

<u>Name and Number</u>	
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	• No. of Checks _____
	(Clerk of Court)	• Amount \$ _____

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

Date Received	By
(Tribal Accounting () Office)	

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

MEMONINEE 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,

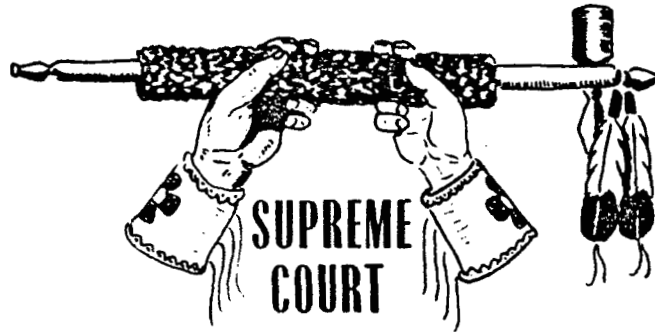
Louis Hawpetoss

APPROVED BY:

David J. Shubert

Menominee Indian Tribe of Wisconsin

P.O. Box 429
KESHENA, WISCONSIN 54135
Telephone 1-715-799-3348



CHIEF JUSTICE - WILMER J. PETERS
ASSOCIATE JUSTICE - HILARY J. WAUKAU, SR.
ASSOCIATE JUSTICE - JOSEPH LAWE

FEE SCHEDULE FOR THE MENOMINEE TRIBAL COURT

THE CLERK OF COURT SHALL COLLECT IN ADVANCE ALL FEES AND CHARGES. NO PAPERS OR DOCUMENTS SHALL BE PERMITTED TO BE FILED NOR ORDER OF THE COURT ENTERED, UNTIL ALL SUCH FEES ARE COLLECTED, EXCEPT IN CASES WHERE IT IS SHOWN TO THE COURT, THAT THE RIGHT OF AN INDIGENT PERSON TO A FORUM WOULD BE PREJUDICED BY THE REQUIREMENT OF A FEE. THE FOLLOWING FEES SCHEDULE IS ADOPTED AND ANY FEE SCHEDULE PRIOR TO THIS DATE IS HEREBY NULLIFIED.

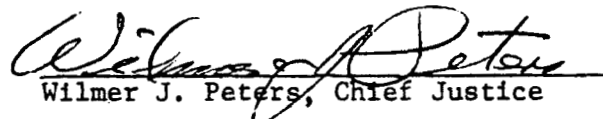
THE CLERK OF COURT MAY REFUSE TO ACCEPT ANY PAPER FOR FILING OR RECORDING UNTIL THE FEE IS PAID AND IF APPLICABLE, ANY BOND REQUIREMENTS ARE DEPOSITED.

IN A CIVIL ACTION THE COURT MAY ASSESS THE ACCRUING COST OF THE CASE AGAINST THE PARTY OR PARTIES AGAINST WHOM JUDGMENT IS GIVEN.

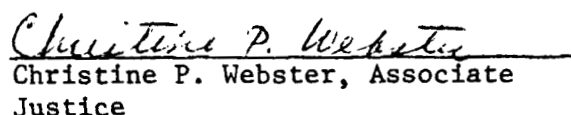
IN CRIMINAL ACTIONS, THE COSTS LISTED DO NOT INCLUDE THE PENALTY ASSESSMENTS OR ANY OTHER ASSESSMENT COSTS WHICH MAY ALSO BE APPLICABLE.

THE REVISED FEES SCHEDULE IS HEREBY ADOPTED THIS 07th DAY OF OCTOBER, 1982.

BY THE COURT:


Wilmer J. Peters, Chief Justice


Sarah L. Skubitz, Associate Justice


Christine P. Webster, Associate Justice

MENOMINEE TRIBAL COURT
COURT COSTS AND FEES

A. CIVIL ACTIONS

- | | |
|--|---|
| (1) Filing all general civil actions & special proceedings | \$25.00 |
| (2) Filing cognovit action | \$25.00 |
| (3) Filing <u>ex parte</u> special proceedings independent of an action | \$25.00 |
| (4) Marriage: Additional fee assessed by clerk against a party initiating an action affecting marriage | \$40.00 and \$20.00 to revise judgment |
| (5) Change of venue | Same as for original action, judge decides who pays fees. |
| (6) Enforcing foreign judgment | \$10.00 |
| (7) Filing voluntary wage earner plan | \$10.00 |
| (8) Filing garnishment action over \$1000 | \$10.00 |
| (9) Third-party complaint | \$30.00 |

B. SMALL CLAIMS ACTIONS

- | | |
|---|--|
| (1) Additional clerk's fee and suit tax required if counterclaim or cross-claim over \$1000 | \$30.00 |
| (2) Issue of summons or for issuing process in proceedings not commenced by summons | \$10.00 |
| (3) Filing garnishment action under \$1000 | \$10.00 |
| (4) For Service of summons by mail | \$2.00 for regular mail; where certified mail is required, raises the fee to \$2.00 plus the cost of certification rounded up to nearest dollar. |

- | | |
|--|-----------------------------------|
| (5) Registered or certified mail service | \$2.00 plus postage,
See Above |
| (6) docketing small claims judgment in judgment docket | \$1.00 |

C. PROBATE ACTIONS: FEES PAID TO REGISTER IN PROBATE

- | | |
|--|---|
| (1) Filing fee | \$5.00 |
| (2) Petition for guardianship of estate or conservatorship (880) | \$10.00 |
| (3) Filing objections to probate of a will(except when filed by guardian ad litem or by attorney for person in military service) | \$10.00 |
| (4) receiving a will for safekeeping | \$5.00 |
| (5) Filing claims against estates | \$3.00 permits fee to be added to the amount of the claim and collected as part of the claim. |

II. FORFEITURE AND CRIMINAL ACTIONS

A. ORDINANCE ACTIONS

- | | |
|-----------------|---------|
| (a) Court costs | \$12.00 |
|-----------------|---------|

B. NATURAL RESOURCES FORFEITURE ACTIONS

- | | |
|--|---------|
| (1) Nonjury: paid by defendant when judgment entered against defendant | \$10.00 |
| (2) Jury: Paid when written demand for a jury | \$10.00 |

C. OTHER FORFEITURE ACTIONS.

- | | |
|--|---------|
| (1) Forfeiture actions; in tribal court: paid by defendant when judgment entered against him for violating a statute or ordinance. | |
| (a) nontraffic | \$10.00 |
| (b) Traffic | \$10.00 |

III JURY FEES

A. REGULAR COURT ACTIONS

- (1) Jury fees in regular
court civil actions \$2.00 per juror

B. NATURAL RESOURCES FORFEITURE ACTIONS

- (1) Jury fees when written demand \$2.00 per juror

C. OTHER FORFEITURE AND SMALL CLAIMS ACTIONS

- (1) Traffic forfeiture action:
six jurors \$2.00 per juror
- (2) Small claims action \$2.00 per juror

V. FILING FEES ON APPEAL AND ON REVIEW OF ADMINISTRATIVE DECISIONS

A. APPEALS TO SUPREME COURT OR APPELLATE COURT

- (1) Filing appeal, cross-appeal,
petition to appeal, petition to
by-pass or other proceeding \$30.00

B. OTHER APPEALS AND REVIEWS

- (1) Lower court review of administrative-
decision \$25.00 review of
any administrative
decision and to
\$40.00 where a trial
de novo is authoriz-
ed and requested

V. CLERK'S FILING AND DOCKETING FEES .

A. JUDGMENTS, TRANSCRIPTS AND WARRANTS

- (1) For filing and docketing trans-
cripts from judgment dockets,
delinquent income tax or unem-
ployment compensation warrants \$3.00
- (2) filing and docketing assignments,
satisfactions of judgments or
warrants or assignment or satis-
faction of any lien. \$3.00

- (3) filing and docketing certified
copies of judgments or judgments
or judgment rolls for enforcing
real estate judgments rendered in
other courts of the state \$3.00
- (4) docketing federal judgments \$3.00

B. LIENS AND OTHER PAPERS

- (1) Filing and docketing
liens \$3.00
- (2) Filing petition for log lien \$3.00
- (3) To make entry on judgment
docket to preserve lien on
property \$3.00

VI. CLERK'S FEES FOR CERTIFICATES, EXECUTIONS, WRITS,
TRANSCRIPTS AND SEARCHES

A. CERTIFICATES

- (1) issuing birth certificates
after paternity judgment \$4.00
- (2) issuing certificates, seals or
commissions to take depositions \$3.00
- (3) For a certificate terminating a
life estate or homestead
interest. \$3.00
- (4) for a certificate or judgment of
descent of lands. \$10.00
- (5) for each certificate issued by
registers in probate or judges \$3.00

B. EXECUTIONS, WRITS AND TRANSCRIPTS

- (1) issuing execution or other writ
not commencing an action or
special proceeding \$3.00
- (2) issuing transcripts from
judgment dockets \$3.00

Rev. .

- | | |
|---|--------|
| (3) issuing execution or writ of
restitution | \$3.00 |
| (4) issuing or docketing transcript | \$3.00 |

C. SEARCH OF RECORDS

- | | |
|---|--------|
| (1) for searching files or records
(clerk of court and register
in probate) | \$4.00 |
|---|--------|

VII. CLERK'S FEES FOR PROVIDING AND CERTIFYING COPIES

A. CLERK OF COURT

- | | |
|---|-------------------------|
| (1) for certifying and transmitting
of documents upon appeal, writ
of error, changes of venue, for
enforcing real estate judgments
in other counties or for enforcing
judgments in other states. | \$10.00 plus
postage |
| (2) for certified copies of any
document where no fee is specified:
(a) if prepared by the clerk,
per page | \$2.25 |
| (b) if only compared by the
clerk, per page, but not
less than \$1.00 | \$1.00 per page |
| (3) for certifying photocopy,
regardless of no. of pages | \$1.00 per page |
| (4) for certified copies of
documents | |
| (a) prepared by clerk, per pg. | \$1.00 per page |
| (b) compared by clerk, per pg. | \$1.00 per page |
| (c) certifying photocopies | \$1.00 per page |

B. REGISTER IN PROBATE

- | | |
|---|-----------------|
| (1) for copies of records or other
papers in custody of register
in probate, per page | \$1.00 per page |
| (2) for comparison and attestation
of records in custody of register
in probate, per page | \$1.00 per page |

C. CLERK OF THE COURT OF APPEALS AND SUPREME COURT

- (1) for making a copy of a record,
paper or opinion of the court and
comparing it to the original .40 per page
- (2) for comparing for certification
of a record, entry or paper, when
the copy is furnished by the per-
son requesting its certification .25 per page
- (3) for comparing a photocopy of an
original record, entry or paper,
when furnished by the party re-
questing its certification .25 per page
- (4) for certificate and seal \$1.00 and creates a
new fee of \$3.00
for an attorney's
certificate of good
standing.

VII. CLERK'S FEES FOR RECEIPT AND DISBURSEMENT OF FUNDS

A. JUDGMENT OR TRUST FUND

- (1) for receiving money
deposited by a debtor
for payment of a judg-
ment or for disbursing
of a trust fund \$10.00 or $\frac{1}{2}$ of 1% whichever is
greater. Creates an additional
\$10.00 transaction fee to be
charged upon each withdrawal
of funds. Extends applicabil-
ity of fee to clerk's services
relating to minor settlements
under 807.10(3), to small
estates under 880.04 and to
deposits of money into court
under 757.25 (814.61(12)(a))

B. ALIMONY OR SUPPORT

- (1) for receiving and disbursing
money deposited as payment
for alimony or support \$10.00 annual fee to be
paid with the first alimony
or support payment in any
year. If not paid when due
fee increased to \$20.00 and
doubled each succeeding year
in which it remains unpaid,
but total not to exceed \$320.

VIII. COURT REPORTER'S FEES

A. TRANSCRIPTS

- | | |
|--|---|
| (1) Transcript in criminal action or transcript of referee's hearing | .50 per 25-line page for original; .15 per 25-line for duplicate. |
| (2) Transcript requested by any party to an action or proceeding | .60 per 25-line for original
.20 per 25-line page for copy |

IX. BAILIFF'S FEES FOR SERVICE

A. SERVICE FEES

- | | |
|---|---|
| (1) for completed service of summons, process, writ, etc., on one defendant | \$8.00 |
| (2) For completed service on each additional defendant | \$8.00 except the fee is \$4.00 whenever a second defendant resides at the same address |
| (3) Attempted service of summons, process, writ, etc., on defendant | Same as above |
| (4) Travel charge for service of process. | .20 per mile |
| (5) Service and return of subpoena to testify | \$8.00 for each person served |
| (6) Service of execution on judgment and other writs not provided for | \$8.00 (see above) |

X. OTHER FEES & CHARGES THE CLERK IS REQUIRED TO COLLECT

A. FOR COURT SERVICES PROVIDED

- | | |
|---|---------|
| (1) Issuance or renewal of occupational driver's permit | \$10.00 |
|---|---------|

- | | |
|--|--|
| (2) Paternity affidavits
executed voluntarily | \$5.00 |
| (3) Photocopy charges
(other than court documents) | .25 per page |
| (4) Marriage license processing | \$2.00 |
| (5) Bond to be deposited by appellant
upon filing a motion for appeal
in criminal actions. Will
be returned after all require-
ments for appearances and
briefs have been fulfilled.
If the Court determines that
any of the above requirements have
not been met, the bond may be
forfeited. | \$40.00 |
| (6) Administrative fee for dropping
of criminal complaints after
charges have been filed | \$25.00 for main
charge & \$10.00
for each addi-
tional charge. |
| (7) Clerk's assistance in
affidavit preparation | \$2.00 |
| (8) Issuance of court forms | .25 per form |

RED LAKE COURT REVENUE

REVENUE		SCHEDULE			1981	1982 (1/10-7/23)
Account No.	Code No.	Definition	Fixed Am't	Add'l Amount		
		Fines			41,498.70	38,668***
	Ch. 1, \$4i	Crim. Jury Fee (if guilty verdict)	--	Cost of Jury	100	20
	Ch. 1, \$5b	Crim. Appeals (plus Additional costs)	20	Cost of Sub-poena, etc.	(Included in Ch. 4, \$10)	(Included in Ch. 4, \$10)
	Ch. 4, \$7	Civil Jury Trial Bond	20		(Included in Ch. 1, \$4i)	(Included in Ch. 1, \$4i)
	Ch. 4, \$8	Civil Appeals	20		----	----
	Ch. 4, \$9	Civil Filing Fees • under \$100 • all other cases*	5 10		665	480
	Ch. 4, \$10	Court Costs (assessed against losing party in civil case)	10	Actual cost of judge and clerk	40	165
		Miscellaneous			360	1,211
		Complaint Bond (Withdrawal fee)	20		1,880	1,400
	Proposed	Criminal Court Costs	10			
	Proposed	Probation Rehabilitation fee	3/month			
	Proposed	Child Support Processing fee	2/payment			
	Proposed	Service of Warrant	20			
TOTAL					\$44,543.70	\$41,944****

*Could include Probate, Name Changes, Adoptions, an any other cases.

**Includes approximately \$19,316 in forfeited bonds.

***Includes approximately \$18,026 in forfeited bonds.

****As of July 9, 1982 there was a total of \$63,626.02 in the Red Lake Court Fund.

THE GARNISHMENT PROCESS

made available by

WARREN SPANNAUS
Attorney General

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INTRODUCTION

During difficult economic times, both business creditors and consumers suffering temporary financial problems need protection from financial disaster. Consumer debtors need laws that enable them to meet their daily financial needs while paying their debts. Likewise, businesses need laws that enable them to collect money owed them.

This pamphlet will explain some of the laws governing the use of legal process to collect debts. These legal processes can be used by anyone, including businesses and consumers, to collect any court judgment. Consumers become creditors when, for example, they seek a refund from a business that sold them a defective product. Consumers frequently sue in conciliation court. Conciliation court judgments can be collected by use of garnishment or execution.

Creditors frequently use legal process; such as garnishment or a writ of execution, to compel debtors to pay their debts. Garnishments and writs of execution, enable creditors to obtain property belonging to the debtor that is not in the debtor's possession but is under the control of a third person. An execution can also reach property under the debtor's control. In the garnishment process, this third person is known as the garnishee and may be the debtor's employer or bank. For example, property subject to garnishment or a writ of execution includes wages in the hands of an employer, money deposited in a bank account, and jewelry in a safety deposit box.

A garnishment merely requires the garnishee to withhold the debtor's property from the debtor. Thus, a garnishment attaches or freezes the debtor's property in the hands of the garnishee. On the other hand, an execution requires the person holding the debtor's property to release it to the creditor immediately.

HOW TO PREVENT GARNISHMENT

Although garnishments and executions are legitimate ways of collecting debts, you should try to prevent them because:

1. They are unexpected and may upset a barely stable budget;
2. They impose an administrative burden on your employer which could adversely affect your job atmosphere, although they may not be the basis for terminating your job; and
3. They may further damage your credit rating.

Of course, garnishments can best be prevented by paying your bills. However, on occasion you might find you cannot pay a bill due to unavoidable causes - unemployment, illness, or divorce. If for any reason you cannot pay a bill or make a payment on a debt, immediately inform your creditor and seek an extension. Since creditors find it more costly to collect by use of legal process, generally they will try to accommodate reasonable requests for an extension of time or a request for a revised payment schedule. Yet, a creditor has no obligation or duty to negotiate or accommodate your requests however reasonable or needy they may be. Once you have failed to pay a debt, the creditor may seek to collect the debt by use of any appropriate legal process.

DEBT COLLECTION BEFORE GARNISHMENT

Before a creditor will employ a legal process, like garnishment, to collect a debt, he will try to collect the money informally. For example, he will probably bill the debtor several times and assign the account to a collection company which will send many letters and make telephone calls. Only if these efforts fail will garnishment be employed. Thus, do not ignore letters from collection companies even if you dispute the debt. Present your position in writing to the creditor and the collection company informing them why you cannot or refuse to pay the debt.

If all informal collection efforts fail, a creditor will usually commence a lawsuit. Generally, a court judgment must be entered against you before you can be subject to garnishment or an execution. Thus, a creditor will serve a lawsuit upon you. You must file an answer to this lawsuit promptly, even if you do not owe the debt. If you fail to answer the lawsuit within the time allowed (usually 20 days after it is served upon you), a creditor can garnish your wages or bank account without first going to court.

GARNISHMENT BEFORE JUDGMENT

In certain situations, the law permits creditors to garnish before obtaining a judgment against the debtor. These include situations where:

1. The debtor failed to answer, within the time allowed, a lawsuit seeking the payment of money due under a contract;

2. The debtor is about to take property out of the state which might be necessary to satisfy any judgment that may be awarded to the creditor;
3. The debtor has property in the state and is either
 - (a) a resident who left the state with intent to defraud his creditors or to avoid service of a lawsuit on him, or
 - (b) a non-resident individual, or a foreign corporation, partnership or association, and
4. The creditor has been unable to serve a lawsuit on the debtor because the debtor lived or worked in a building with restricted access.

However, before the creditor can garnish in all of these situations except for the first, he must get a court order. To obtain the court order, the creditor must state under oath the basis of this debt, the amount of money the debtor owes him, and what facts entitle him to garnish before judgment. Although the debtor is not present when the court issues this order, a hearing is held within seven days where the debtor can appear to oppose the continuation of the garnishment.

GARNISHMENT AFTER JUDGMENT

As stated above, generally a creditor must obtain a judgment in his favor after a court hearing before he can garnish. Once a judgment is obtained, the creditor must do the following:

1. The creditor can obtain the required garnishment forms from any legal form supplier listed in the yellow pages of the telephone book. These forms include:
 - a. Garnishment (or Execution) Exemption Notice
 - b. Garnishment Summons
 - c. Notice to Judgment Debtor
 - d. Affidavit of Service
 - e. Garnishment (or Execution) Disclosure

2. Only in the case of earnings, at least 10 days before your earnings can be garnished (or levied upon by a writ of execution) for the first time on a given debt, the creditor must mail to the debtor or have a third party or a sheriff deliver to the debtor a notice - the Garnishment (or Execution) Exemption Notice - informing him of the three statutory exemptions from garnishment (or execution) provided by law: the wages of a recipient or public assistance or of a person who, within the last six month, has received public assistance payments or was released from prison.
 - a. This 10 day notice, known as the Garnishment (or Execution) Exemption Notice, contains a form by which the debtor can assert, under penalties of perjury, that he is entitled to one of the three statutory exemptions from garnishment (or execution) afforded to earnings.
 - b. If a debtor claims an exemption in bad faith, he can be penalized \$100, plus attorney's fees. Also, any assignment of wages (i.e., an agreement to pay your wages to someone else such as a loan company) made by the debtor to a third party during this 10 day period is automatically void and is to be disregarded by the debtor's employer.
3. If no statement of exemption is received by the creditor within 10 days from service of the Garnishment (or Execution) Exemption Notice, he may proceed with the garnishment. If the creditor receives an exemption statement, he may still garnish (or execute) but if the debtor later successfully asserts his exemption and a court finds the creditor disregarded it in bad faith, the debtor can recover his costs, attorney fees, damages, and penalty up to \$100 from the creditor.
4. If the creditor proceeds with the garnishment, he fills out a Garnishment Summons form and has a third party or a sheriff deliver to the garnishee a Garnishment (or Execution) Disclosure form and \$2.00 for expenses. The creditor must mail to the debtor copies of the garnishment summons and all other papers served on the garnishee.
5. To obtain the release of garnished funds or property, the creditor has a sheriff serve on the garnishee a Writ of Execution issued by the court. An Execution can be obtained from the Clerk of Court after you have won your judgment. The execution form contains a place for claiming collection costs. If the judgment is for less than \$2,500, the creditor's attorney or a sheriff may make execution through a registered or

certified letter to the third party containing a copy of the execution. One execution can obtain the release of funds garnished from many pay periods. The creditor can also obtain garnished funds by delivering to the garnishee a release or a statement signed by the debtor consenting to the release of the funds.

6. The creditor must serve another Garnishment Summons each time he wishes to collect any additional sums owed on a debt. Thus, a separate Garnishment Summons must be used to garnish earnings from each future pay period until the debt is satisfied.

GARNISHEE'S DUTIES AND RESPONSIBILITIES

A garnishee must respond to the garnishment process. If he fails to do so, judgment may be rendered against him in a court for the amount he should have withheld from the debtor. The responsibilities of a garnishee are as follows:

1. Upon receipt of a Garnishment Summons, a garnishee must retain any of the debtor's property in his possession (e.g., jewelry or bonds in a safety deposit box) and money owed to the debtor (e.g., money on deposit in the debtor's bank account). The amount withheld may not exceed 110 percent of the unpaid portion of the creditor's judgment or claim. (The extra 10 percent covers the costs of collection.) For an employer, this property and indebtedness includes unpaid earnings and earnings earned or to be earned within the pay period during which the summons was served.
 - a. Earnings means compensation paid or payable for personal services whether called wages, salary, commission, or bonds, and includes periodic payments pursuant to a pension or retirement program.
 - b. The amount of earnings a garnishee must withhold may include two pay periods if the summons is served when earnings from a prior completed pay period are owed but not yet paid. For example, if the employee's pay period ended on a Friday and he was paid for that pay period on the following Wednesday, a garnishee summons could affect pay checks for two pay periods if the summons was served on the Monday or Tuesday preceding the employee's receipt of his pay check. A garnishee summons cannot affect two pay periods when an employee receives his pay check for a pay period on the last day of that pay period.

2. When more than one of the debtor's creditors serves a garnishee summons (or execution) on the garnishee, the garnishee honors them in the order in which they were served. This priority scheme is important where the property or wages available for garnishment are less than the creditor's claims.
3. Within 20 days of receiving the Garnishment Summons, the garnishee must complete a written disclosure form furnished him by the creditor, setting forth any money he owes the debtor and any property belonging to the debtor in his possession not exceeding 110 percent of the unpaid portion of the creditor's judgment or claim.
4. The garnishee must retain the property and money in his possession until the creditor serves on him a Writ of Execution or the debtor authorizes release of the property or money. Upon receipt of an execution or a release, the garnishee must release to the creditor the property and money retained.
5. If the garnishee does not receive a Writ of Execution or a release from the debtor, in most cases he must pay the money or property to the debtor within 180 days.

DETERMINING THE AMOUNT OF EARNINGS SUBJECT TO GARNISHMENT

Minnesota law exempts a portion of everyone's earnings from garnishment or execution. This exemption protects part of a debtor's income to enable him to pay for his day-to-day necessities. Earnings include sick pay.

The amount of earnings subject to garnishment or execution is calculated after first determining disposable earnings. Disposable earnings means that part of an individual's earnings remaining after deductions required by statutory law, such as federal and state withholding taxes and social security taxes. Court ordered alimony or child support may not be deducted in deriving disposable earnings. The amount of disposable earnings in a pay period exempt from garnishment or execution is the greater of:

1. 75 percent of the debtor's disposable earnings; or
2. 40 times the federal minimum wage multiplied by the number of weeks in the pay period (currently this is \$3.35 an hour or \$134 a week).

Based upon the current federal minimum wage of \$3.35 an hour, when disposable earnings are \$178.67 a week or less, only the amount over \$134 a week may be garnished. When disposable earnings are over \$178.67 a week, 75 percent of it is exempt from garnishment or execution leaving 25 percent subject to garnishment or execution.

The following examples illustrate the amount subject to garnishment:

1. If the debtor's earnings in a week are \$134 or less, none of the earnings may be garnished.
2. If the debtor's disposable earnings in a week are \$150, only \$16 may be garnished since only the amount over \$134 can be garnished when the disposable earnings are \$178.67 or less in a week.
3. If a debtor's disposable earnings in a week are \$200, 25 percent of the disposable earnings may be garnished. Thus, \$50 would be subject to garnishment.

The amount of earnings available for garnishment can be affected by wage assignments. Wages that have been properly assigned by a debtor cannot be reached by garnishment unless the assignment occurred after service of a Garnishment Exemption Notice and within 10 days before the garnishee received the first garnishment or execution on a debt.

OTHER PROTECTIONS FOR DEBTORS

As noted above, a portion of a debtor's earnings are exempted from garnishment. In order to enable debtors to provide for their day-to-day necessities, this earnings exemption cannot be waived. Prior to 1976 the purpose of this exemption could be defeated by an alert creditor. If the debtor placed his exempt earnings in his checking account, a creditor could garnish or levy upon the debtor's bank account even though it contained exempt funds. Now, however, Minnesota law provides that these exempt earnings are also exempt for 20 days after they are deposited in a bank account.

Similarly, the three other exempt funds - public assistance funds and the earnings of those either on public assistance or release from prison within the last six months - are exempt for 60 days after they are deposited in a bank account.

A debtor's most important protection is the law which prohibits the employer from firing the debtor due to garnishment or executions, regardless of the number of times they occur.

WHERE TO GET INFORMATION

We hope this pamphlet has answered your questions concerning garnishment. If you have any other questions about garnishment, write to the Consumer Protection Division at:

Office of the Attorney General
Consumer Protection Division
102 State Capitol Building
St. Paul, Minnesota 55155

GLOSSARY

Creditor -	Anyone who has a claim for money or property against another.
Debtor -	Anyone who owes money or property to another.
Disposable earnings -	That part of earnings remaining after deductions required by law.
Earnings -	Compensation paid or payable for personal service including wages, salary, commission bonus, and periodic payments under a pension or retirement program.
Garnishee -	A party who receives a garnishment summons and holds property belonging to the debtor.
Garnishment - (or Execution) Disclosure	A form completed by the garnishee informing a creditor of the amount of money or other property belonging to the debtor in the garnishee's possession.
Garnishment - (or Execution) Exemption Notice	A notice to debtor that certain types of earnings are exempt from legal process; issue by a creditor and mailed to debtor at least 10 days before use of garnishment or execution
Garnishment - Summons	Legal process requiring a third party to withhold the debtor's property from the debt issued by a creditor usually after he has obtained a judgment.
Public Assistance Funds -	Includes AFDC, supplemental security income (i.e., social security), medical assistance, Minnesota supplemental assistance, and general assistance; does not include unemployment compensation or food stamps.
Release -	A statement signed by a debtor authorizing the garnishee to release to the creditor the garnished property belonging to the debtor.
Writ of Execution-	Legal process, issued by a court, that orders the sheriff to seize a judgment debtor's property wherever it is located.

State of Minnesota

County of Court
..... (Judgment Creditor)
..... (Judgment Debtor)

GARNISHMENT EXEMPTION NOTICE

The State of Minnesota
To the above named Judgment Debtor:

Please take notice that a Garnishment summons may be served upon your employer, without any further court proceedings or notice to you, ten days or more from the date hereof. Your wages may be exempted from garnishment if you are now a recipient of relief based on need, if you have been a recipient of such relief within the last six months, or if you have been an inmate of a correctional institution in the last six months. Relief based on need includes, AFDC, supplemental security income, medical assistance, Minnesota supplemental assistance, and general assistance. It does not include Social Security, unemployment compensation, food stamps or workers' compensation.

If you wish to claim such an exemption, you should fill out the appropriate form below, sign it, and send it to the judgment creditor's attorney and the garnishee.

You may wish to contact the attorney for the Judgment Creditor in order to arrange for a settlement of the debt.

Penalties

1. Be advised that even if you claim an exemption, a Garnishment Summons may still be served on your employer. If your wages are garnished after you claim an exemption, you may petition the court for a determination of your exemption. If the court finds that the creditor disregarded your claim of exemption in bad faith, you will be entitled to costs, reasonable attorney's fees, actual damages, and an amount not to exceed \$100.

2. However, be warned if you claim an exemption, the creditor can also petition the court for a determination of your exemption, and if the court finds that you claimed an exemption in bad faith, you will be assessed costs and reasonable attorney's fees plus an amount not to exceed \$100.

3. If after receipt of this notice, you in bad faith take action to frustrate the garnishment, thus requiring the creditor to petition the court to resolve the problem, you will be liable to the creditor for costs and reasonable attorney's fees plus an amount not to exceed \$100.

Dated:
..... (Attorney for) Judgment Creditor
Address
Telephone

I hereby claim under penalty of perjury that my wages are exempt from garnishment because:

(1) I am presently a recipient of relief based on need. (Specify the program, case number, and the county from which relief is being received. There is no limit to the number of times this exemption may be claimed.)

Program	Case Number (if known)	County
---------	------------------------	--------

(2) I am not now receiving relief based on need, but I have received relief based on need within the last six months. (Specify the program, case number, and the county from which relief has been received.) I am aware that I am not permitted by law to use this exemption for more than one six month period every three years, and that I may be penalized if I violate this law.

Program	Case Number (if known)	County
---------	------------------------	--------

(3) I have been an inmate of a correctional institution within the last six months, and I have not claimed this exemption within the last three years. (Specify the correctional institution and location.)

Correctional Institution	Location
--------------------------	----------

I hereby authorize any agency that has distributed relief to me or any correctional institution wherein I was an inmate to disclose to the above-named creditor or his attorney whether or not I was a recipient of relief based on need or an inmate of a correctional institution within the last six months.

Judgment Debtor
Address

State of Minnesota

County of Court

..... (Judgment Creditor)

..... (Judgment Debtor)

..... (Garnishee)

GARNISHMENT SUMMONS

To the State of Minnesota
To the above named Garnishee:

You are hereby summoned and required to serve upon the judgment creditor or his attorney, within 20 days after service of this summons upon you, written disclosure, under oath, setting forth your indebtedness to the

judgment debtor
above named, (Give full name and residence of judgment debtor) and any property, money or effects of said judgment debtor which are in your possession. Your disclosure need not exceed 110 percent of the amount of the judgment creditor's judgment which remains unpaid. Judgment was entered against the judgment debtor

on, in the amount of \$.....,

and the amount of said judgment which remains unpaid is \$....., you are further hereby required to retain in your possession such property, money and effects in an amount not exceeding 110 percent of the amount of the judgment which remains unpaid. You may not, however, pursuant to this summons, withhold from the debtor any earnings due to the debtor that are exempt from garnishment pursuant to Minnesota Statutes, Section 571.55.

Failure to disclose and withhold in accordance with this summons may render you liable to the judgment creditor for an amount not exceeding the judgment creditor's judgment against the judgment debtor or 110 percent of the amount claimed in the garnishee summons, whichever is smaller.

You shall retain such property, money and effects in your possession until such time as the judgment creditor causes a writ of execution to be served upon you, until the judgment debtor authorizes release to the

judgment creditor, or until the expiration of days from the date of service of this summons upon you, when you shall return such property, money and effects to the judgment debtor.

Any assignment of wages made by the judgment debtor or indebtedness to you incurred by the judgment debtor within ten days prior to the receipt of the first garnishment on a debt is void and should be disregarded.

You are prohibited by law from discharging said judgment debtor because his earnings have been subjected to garnishment.

.....
Attorney for Judgment Creditor

.....
Address

Dated:, 19

NOTICE TO JUDGMENT DEBTOR

To: Judgment Debtor

..... :

Sir:

Take notice that a garnishee summons, garnishment disclosure form and written interrogatories (strike out if not applicable), which are herewith served upon you, were personally served upon the garnishee named therein, by delivering copies therefore to , the said garnishee, and the said garnishee was paid in advance the sum of \$2 fees.

.....
Attorney for Judgment Creditor

.....
Address

AFFIDAVIT OF SERVICE

State of Minnesota

County of

....., being duly sworn upon oath, says that on the day of , 19....., at of , in said county he served upon the within-named judgment debtor copies of the within garnishee summons, garnishment disclosure form, written interrogatories (strike out if not applicable), and order, together with a notice to said judgment debtor , of which the foregoing is a copy, stating that the above-described documents were personally served upon said garnishee , signed by Said service was made by depositing in the United States mail at said City of , said documents properly enveloped, with postage prepaid, and addressed to:

.....
Subscribed and sworn to before me

This day of , 19.....

.....
Notary Public

..... County, Minnesota.

State of Minnesota,

County of

DISTRICT COURT

Judgment Creditor

vs.

Judgment Debtor
and

Garnishee

Garnishee Summons and
Notice to Judgment Debtor

Filed this day of
....., 19.....

Clerk

By Deputy

State of Minnesota,
County of } ss.

AFFIDAVIT OF SERVICE

....., being duly sworn, on oath says, that on the
day of, 19....., at the..... of.....
in said county, he served the within Summons on the within named Garnishee..... by delivering a copy thereof to.....
....., the said Garnishee....., and paid.....
to in advance the sum of \$2.00 fees; and that on the.....
day of, 19....., at the..... in said County, he served upon
the within named Judgment Debtor a copy of the within Summons, together with a notice to said Judgment Debtor..... of
which the foregoing is a copy, stating the time, place and manner of service of said Summons upon said Garnishee....., signed
by Said service was made by leaving with.....
a copy of said Summons and Notice at the last usual place of abode of said Judgment Debtor....., in said.....
said..... being a person of suitable age and discretion then resident therein.

FEES: Service of Summons, \$..... Notice, \$.....
Copy of Summons - \$..... Notice, \$.....
Mileage - - - - \$..... Notice, \$.....

Subscribed and sworn to before me
this day of, 19.....
Notary Public, County, Minnesota
My commission expires 19.....

State of Minnesota, } ss.
County of _____

IN DISTRICT COURT

JUDICIAL DISTRICT

Against Judgment Creditor

And Judgment Debtor

GARNISHMENT SUMMONS

Garnishee

THE STATE OF MINNESOTA, To the above named Garnishee:

You are hereby summoned and required to serve upon the judgment creditor or his attorney, within 20 days after the service of this summons upon you, a written disclosure under oath, touching your indebtedness to the judgment debtor,

above named, and any property, money, or effects of said judgment debtor in your possession or under your control, which disclosure need not exceed 110 percent of the amount of judgment creditor's judgment. The amount of judgment creditor's judgment against the judgment debtor is \$ _____; and you are hereby required to retain in your possession such property, money, and effects in an amount not exceeding 110 percent of the amount of such judgment.

(Give full name and residence of judgment debtor)

Attorney for Judgment Creditor

Dated _____, 19 _____

Address

NOTICE TO JUDGMENT DEBTOR

To _____, Judgment Debtor:
SIR: Take notice that a Garnishment Summons, of which the above is a true copy, and which is herewith served upon you, was personally served upon the Garnishee named therein, by delivering a copy thereof to the said Garnishee, at _____, in said County, on the day of _____, 19 _____, and that at said time and place the said Garnishee was paid in advance the sum of \$2.00 fees.

Attorney for Judgment Creditor

Address

State of Minnesota

County of Court

Judgment Creditor

and

Judgment Debtor

and

Garnishee

I am the of the garnishee herein, and duly authorized to disclose for said garnishee.

On the day of, 19, the time of service of garnishee summons herein on said garnishee, there was due and owing the judgment debtor above named from said garnishee the following:

(1) *Earnings.* For the purposes of garnishment, "earnings" means compensation paid or payable for personal service whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both that past pay period and the current pay period.

(a) Enter on the line below the amount of disposable earnings earned or to be earned by the judgment debtor within the judgment debtor's pay periods which may be subject to garnishment.

(b) Enter on the line below 40 times the hourly federal minimum wage times the number of work weeks within the judgment debtor's pay periods which may be subject to garnishment. When such pay periods consist of other than a whole number of work weeks, each day of a pay period in excess of the number of completed work weeks shall be counted as a fraction of a work week equal to the number of work days divided by the number of work days in the normal work week.

(c) Enter on the line below the difference obtained (never less than zero) when line (b) is subtracted from line (a).

(d) Enter on the line below 25 percent of line (a).

(e) Enter on the line below the lesser of line (c) and line (d).

(2) *Money.* Enter on the line below any amounts due and owing the judgment debtor, except earnings, from the garnishee.

(3) *Property.* Describe on the line below any personal property, instruments or papers belonging to the judgment debtor and in the possession of the garnishee.

(4) *Set-off.* Enter on the line below the amount of any set-off, defense, lien or claim which the garnishee claims against the amount set forth on lines (1)(e), (2) and (3) above. Allege the facts by which such set-off, defense, lien or claim is claimed. (Any indebtedness to a garnishee-employer incurred by the judgment debtor within 10 days prior to the receipt of the first garnishment on a debt is void and should be disregarded.)

(5) *Exemption.* Enter on the line below any amounts or property claimed by the judgment debtor to be exempt from execution.

(6) *Adverse Interest.* Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the judgment debtor's property. (Any assignment of wages made by the judgment debtor within 10 days prior to the receipt of the first garnishment on a debt is void and should be disregarded. State the names and addresses of such persons and the nature of their claim, if known.)

(7) Enter on the line below the total of lines (4), (5) and (6).

(8) Enter on the line below the difference obtained (never less than zero) when line (7) is subtracted from the sum of lines (1)(e), (2) and (3).

(9) Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.

(10) Enter on the line below the lesser of line (8) and line (9). As garnishee, you are hereby instructed to retain this amount only if it is \$10 or more.

Authorized Representative of Garnishee

Title

Subscribed and sworn to before me
This day of, 19

Notary Public

..... County, Minnesota

CASE NO. _____
ISSUE DATE _____

GARNISHEE DISCLOSURE

Plaintiff (s)

vs

Defendant (s)

Name

Address

Garnishee-Defendant

City

I, (in behalf of)* _____, Garnishee, do acknowledge and understand that FAILURE TO MAKE DISCLOSURE, WITHIN 6 DAYS FROM THE DATE OF SERVICE OF THE WRIT OF GARNISHMENT, CAN RESULT IN A JUDGMENT BEING TAKEN AGAINST THE GARNISHEE-DEFENDANT IN THE FULL AMOUNT CLAIMED IN THE WRIT and, therefore, having knowledge of the facts and being duly sworn, depose and say that:

- (1) () At the time of service of the Writ of Garnishment the Garnishee was not indebted Not to the Defendant for any sum or amount whatever, and Garnishee did not have possession or control of any property, money, goods, chattels, credits, negotiable instruments, or effects belonging to the Defendant, State reason: (employee sick, laid off, on vacation etc.) _____
- (2) () At the time of service of the Writ of Garnishment the Garnishee was not indebted to Defendant for any sum or amount whatever, but the Garnishee did have possession or control of the following property, money, goods, chattels, credits, negotiable instruments, or effects belonging to the Defendant, to-wit: _____
- (3) () At the time of service of the Writ of Garnishment, Garnishee did not have possession or control of any property, money, goods, chattels, credits, negotiable instruments, or effects belonging to Defendant: but Garnishee was indebted to Defendant for wages (including bonuses, commissions, vacations, and sickpay), to-wit: \$ _____ for (weekly/bi-weekly/semi-monthly/monthly) work period. *(Strike out inapplicable words)

GARNISHMENT DISCLOSURE WORK SHEET

(1) GROSS EARNINGS FOR PAY PERIOD.....\$ _____

(2) DEDUCTIONS REQUIRED BY LAW

Fed'l. Inc. Tax.....\$ _____
FICA.....\$ _____
State Inc. Tax.....\$ _____
City Inc. Tax.....\$ _____
State Retirement.....\$ _____

(Total).....\$ _____

(3) DISPOSABLE EARNINGS.....\$ _____ X 25%

(4) EXEMPTED DEDUCTIONS

Regular Payroll Deductions
for Child Support.....\$ _____
Tax Liens.....\$ _____

(Total).....\$ _____

(5) AMOUNT DUE Make checks payable as outlined in
Paragraph 4 Writ of Garnishment

(6) If "TOTAL DUE" is less than calculated amount, make check for "TOTAL DUE" \$ _____

Balance Due

on Judgment \$ _____

Fee \$ _____

Service \$ _____

Mileage \$ _____

Disclosure

Fee \$ 2.00

(TOTAL DUE) \$ _____

Pursuant to Statue, the above amount has been forwarded to the Court. This disclosure is supported by payroll records on file and a copy of this disclosure was served upon the Plaintiff or his Attorney on _____. In addition, the Defendant has been informed of this Garnishment. (Title III of the Consumers Credit Protective Act, Public Law 90-231 is applicable).

Subscribed and sworn

to before me on _____

Deponent

Notary Public

County, Minnesota My Commission Expires: _____

SEE REVERSE SIDE FOR INSTRUCTIONS

WHO CAN DISCLOSE

The Garnishee or any officer, agent, or other person on behalf of a corporation may make a disclosure.

WAGES SUBJECT TO GARNISHMENT

The term "earnings" means compensation paid or payable for personal services whether called wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program.

An employee's "disposable earnings" means that part of his earnings remaining after the deduction from those earnings of any amount required by law to be withheld.

RESTRICTIONS ON GARNISHMENT

The Federal Wage Garnishment law limits the amount of an employee's earnings which may be subject to garnishment.

The maximum part of the total disposable earnings of an individual which is subject to garnishment in any workweek may not exceed the lesser of:

- (a) 25 percent of the disposable earnings for that week, OR
- (b) the amount by which his disposable earnings for that week exceeds 40 times the Federal minimum hourly wage prescribed by the Fair Labor Standard Act in effect at the time earnings are payable (currently this is \$3.35 an hour or \$134 a week).

DETERMINING THE AMOUNT SUBJECT TO GARNISHMENT

The following examples illustrate the statutory test for determining the amounts subject to garnishment:

- (a) An employee's earnings may not be garnished in any amount where his disposable earnings in a particular week are \$134 or less. (For those paid on a monthly basis, this amount is \$580.66, and for those paid semi-monthly, it is \$290.50 and bi-weekly, it is \$268.
- (b) An employee's gross earnings in a particular week are \$180 after deductions required by law, his disposable earnings are \$150. Both tests are applied to determine which is the lesser amount for garnishment purposes.
 - (1) $\$150 \times 25 \text{ percent} = \37.50
 - (2) $\$3.35 \times 40 \text{ hours} = \134.00
 - (3) $\$150 - \$134 = \$16.00$

In this week, only \$16.00 may be garnisheed, since this is the lesser amount. (\$150.00 would be paid to the employee).

- (c) An employee's gross earnings in a particular workweek are \$150.00 after deductions required by law, his disposable earnings are \$120.00. The lesser figure would be determined as follows:

- (1) $\$240 \times 25 \text{ percent} = \60.00
- (2) $\$3.35 \times 40 \text{ hours} = \134
- (3) $\$240 - \$134 = \$106$

In this week, only \$60 may be garnisheed, since this is the lesser amount. (\$180 would be paid to the employee).

No court of the United States or of any State may make, execute or enforce any order or process which provides for the garnishment of the aggregate disposable earnings of any individual for any pay period in an amount which is in excess of the following:

	WEEKLY	BI-WEEKLY	SEMI-MONTHLY	MONTHLY
1.	\$134/less NONE	\$268 or less NONE	\$290.50 or less NONE	\$580.66 or less NONE
2.	\$134 - \$178.66 Amount Above \$134	\$268 - \$357.33 Amount Above \$268	\$290.50 - \$386.66 Amount Above \$290.50	\$580.66 - \$774.21 Amount Above \$580.66
3.	Over \$178.66 MAX. 25%	Over \$357.33 MAX. 25%	Over \$386.66 MAX. 25%	Over \$774.21 MAX. 25%

CHAPTER 17: Expenditures

- A) Financial Management
- B) FY 80 and 81 Expenditures
- C) Budget Forms

Trial Court Management Series

Financial Management

by
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U.S. Department of Justice
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Law Enforcement Assistance Administration
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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

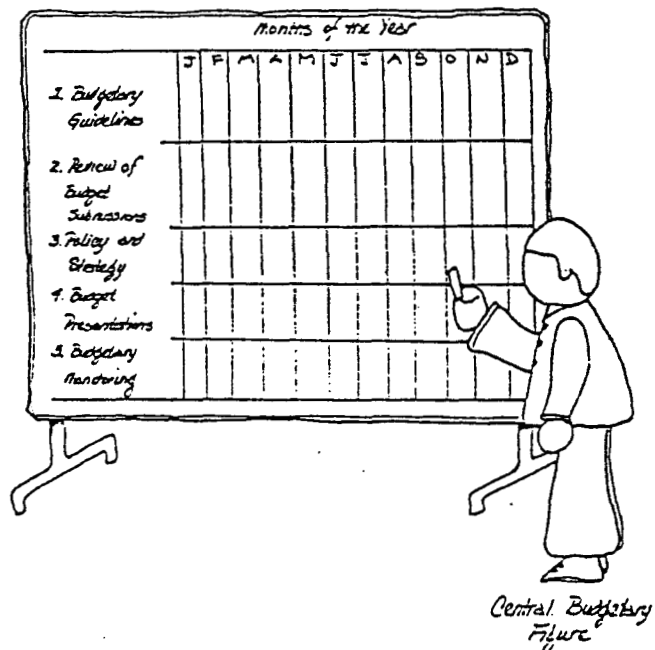


Illustration 2: Trial Court Budgeting
is an On-Going Process

process which deals with those aspects of budgeting 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*

Type of Procedure	Possible Procedural Steps
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.

The above aspects of budgeting are not discrete, but 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.

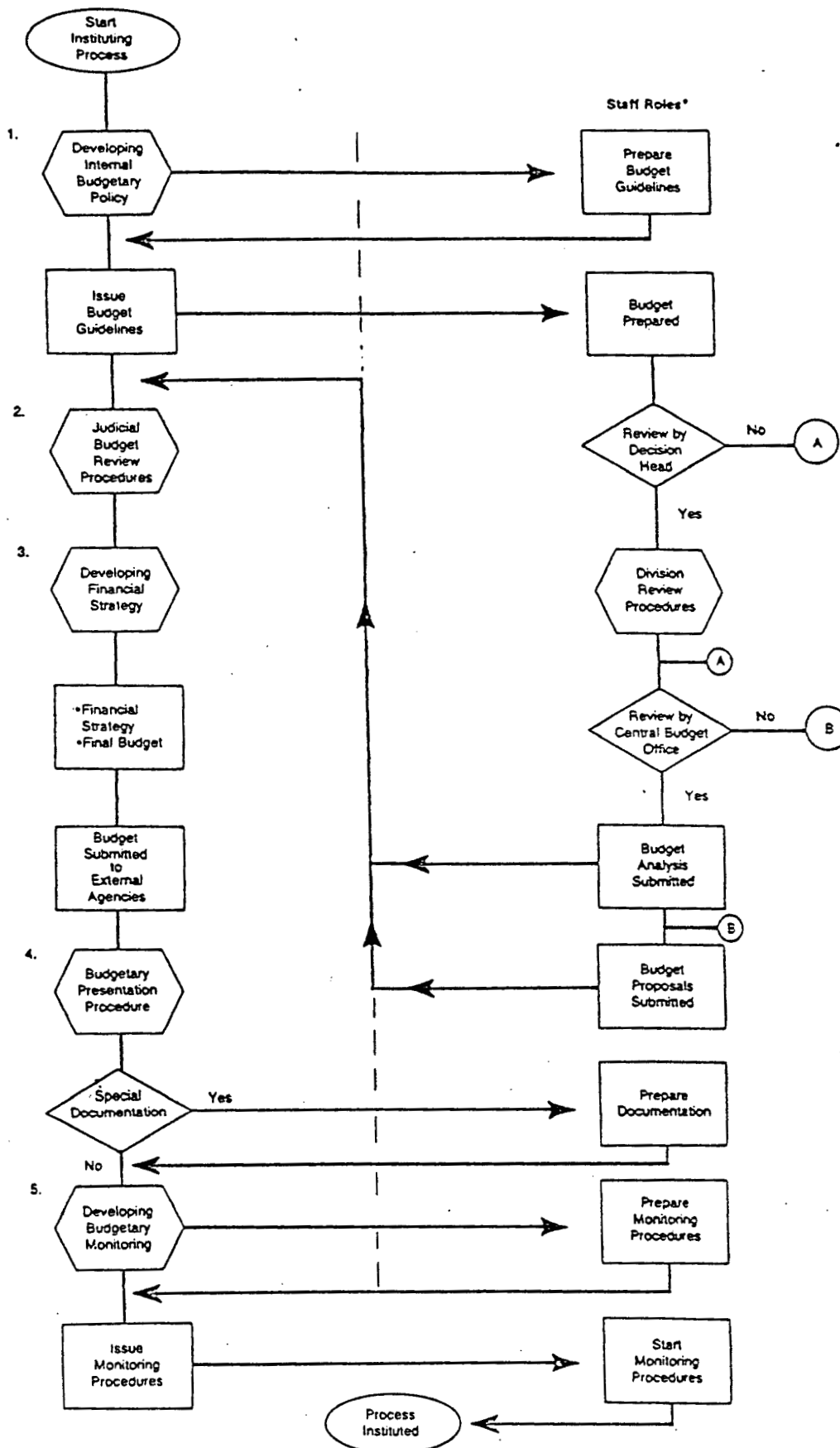
a. *Degree of state funding.* Most general jurisdiction trial courts receive state funding. Where the level of state funding is high, trial court budgeting necessarily becomes state-oriented.¹²

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.

tonomy 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 imprecise 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 burdensome. 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:

- 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 procedure* 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-

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

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 rejustification 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 of 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 Material \$	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.	
Work Output	Measures reflecting goods and services produced.	<ul style="list-style-type: none"> • opinions written • cases disposed
Effectiveness	Measures describing the relationship between the work requirements imposed on the court and those performed.	<ul style="list-style-type: none"> • filing/disposition ratios • pending cases • time from filing to disposition
Productivity	Measures describing outputs per worker or per time period.	<ul style="list-style-type: none"> • pre-sentence investigations per officer or per week
Efficiency	Unit cost or program cost of output.	<ul style="list-style-type: none"> • dollar cost per disposed case

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
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.

	fits. When a trial court must budget for fringe benefits, there must be a check to determine if the computation accurately reflects the required percentage of the total salaries estimated for the budget period (including increases in salaries and number of positions).
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

- 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-

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.

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.

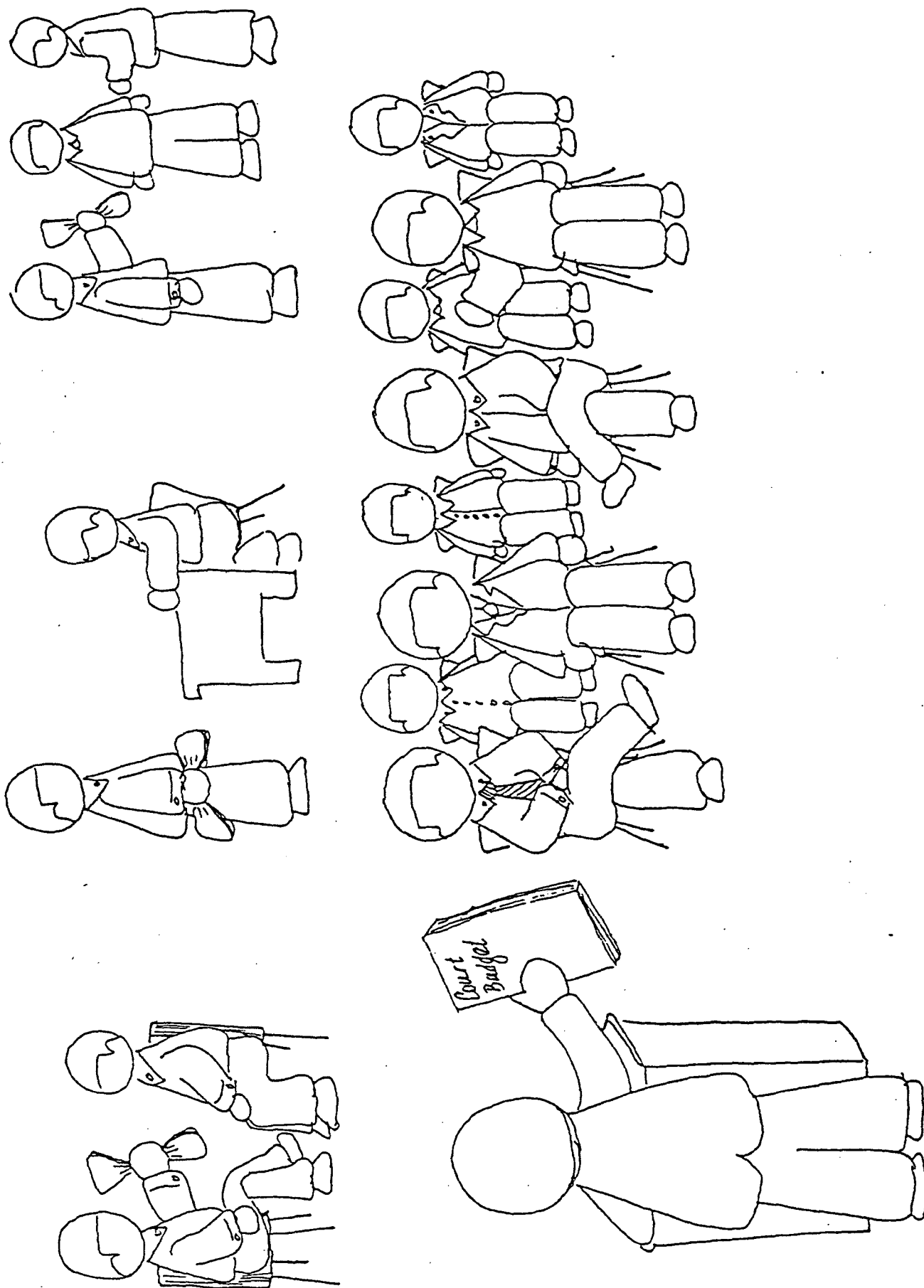


Illustration 3: The Budget Process is a Series of Negotiations

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

³⁶In Tennessee, a county judge is a top county executive. In many Alabama counties, probate judges have a strong executive position in the county.

³⁷A chancery clerk in Mississippi is the chief of staff for the county governing board and the county treasurer.

³⁸In 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.

³⁹For 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.

³⁵In 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 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 reports 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?

TRIAL COURT BUDGET

	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					
<u>Salary</u>					
.Judges					
.Staff					
<u>Fringe</u>					
<u>Benefits</u>					
.					
.					
.					
.					
(Sub-total)					
SERVICES					
.					
.					
.					
.					
.					
(Sub-total)					
OPERATING COSTS					
.Telephone					
.Travel					
.Office					
. Supplies					
.					
.					
.					
.					
.					
(Sub-total)					
<u>Equipment/</u>					
<u>Furniture</u>					
.Purchase					
.Rent					
.Repair/					
Maintenance					
(Sub-total)					
FACILITIES					
.Purchase					
.Rent					
.Repairs/					
Remodeling					
.Maintenance					
(Sub-total)					
TOTALS					

COURT REVENUE

[illegible]

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

(TOTAL

MENOMINEE TRIBAL COURT
COURT BUDGET FY 1980

	EXPENDITURES FROM BIA <u>APPROPRIATIONS</u>	TRIBAL <u>FUNDS</u>	<u>CETA</u>	<u>TOTALS</u>
Salary	88,500.00		24,416	112,916.00
Fringe	20,000.00			20,000.00
Rent and Maintenance	15,542.20			15,542.20
Telephone	1,500.00			1,500.00
Supplies	1,050.00	151.73		1,201.73
Subscriptions	1,000.00			1,000.00
Travel	2,500.00			2,500.00
Contractual	2,000.00			2,000.00
Indirect costs	8,982.00			8,982.00
Equipment	2,925.00	1,000.00		3,925.00
Witness fees		3,004.04		3,004.04
Jury fees		3,148.92		3,148.92
Court Support ¹		<u>21,409.00</u>		<u>21,409.00</u> ²
TOTALS	143,999.20	28,713.69	24,416	197,128.89

¹ In FY 80 the court overran BIA appropriations; the entire court budget was paid out of tribal funds. No breakdown was available for those expenditures.

² Explanation of Collapsed Budget Sheet

- Column 1 (BIA appropriations) figures taken from 1980 and 1981 BIA request for reimbursement sheets, column 4, total invoiced to date.
- Column 2 (Tribal funds) figures were taken from data supplied by tribal accounting office for items requested by court out of tribal funds. Jury and witness fee totals were taken from monthly budget reports supplied by the accounting office to the court.
- Column 3 (CETA), data for figures for staff salaries paid by CETA were provided by the tribal CETA office.

MENOMINEE TRIBAL COURT
COURT BUDGET FY 1981

	EXPENDITURES FROM BIA <u>APPROPRIATIONS</u>	TRIBAL <u>FUNDS</u>	<u>CETA</u>	<u>TOTALS</u>
Salaries	98,102.98	7,394.84	12,840	118,337.82
Fringe	18,816.70			18,816.70
Paralegal fees	550.00			550.00
Lease/Rental Equipment	7,525.24	700.00		8,225.24
Repair and Maintenance	376.13			376.13
Utilities/Phone Postage	2,416.92			2,416.92
Training/Related	3,702.55			3,702.55
Meetings/Related	528.00			528.00
Misc. Travel and Related	2,388.10			2,388.10
Professional fees	2,708.30			2,708.30
Office Supplies	1,755.87	1,742.50		3,498.37
Education and Reference	709.06			709.06
Minor Tools/ Furn. & Equip.	462.14			462.14
Indirect Cost	19,293.00			19,293.00
Witness fees		2,014.84		2,014.84
Jury fees		2,468.25		2,468.25
Audit fee	<u> </u>	<u>1,500.00</u>	<u> </u>	<u>1,500.00</u>
TOTALS	159,334.99	15,820.43	12,840	187,995.42

Explanation of Collapsed Budget Sheet

1. Column 1 (BIA appropriations) figures taken from 1980 and 1981 BIA request for reimbursement sheets, column 4, total invoiced to date.
2. Column 2 (Tribal funds) figures were taken from data supplied by tribal accounting office for items requested by court out of tribal funds. Jury and witness fee totals were taken from monthly budget reports supplied by the accounting office to the court.
3. Column 3 (CETA), data for figures for staff salaries paid by CETA were provided by the tribal CETA office.

(1981)

13. TOTAL				
Plan	SPENT	ENCUM	BALANCE	TOTAL LINE ITEM BUDGET
				91,587
				8,579
				7,633
				2,000
				21,391
				123,557
				123,557

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.

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

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

BUREAU OF INDIAN AFFAIRS FINANCIAL PROGRAM PLAN SUMMARY

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

9.			10.	11.	12. QUARTERLY FINANCIAL PROGRAM PLAN								13. TOTAL LINE ITEM BUDGET		14. PROGRAM COST ACCOUNT DISTRIBUTION COMPONENT/WORK ORDER											
DESCRIPTION			Class	Oblig	1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		Obligation	Code	Code	Code	Code	Code	Code	Code						
					Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation														
A	G4-92	PERSONNEL SERVICES																								
B		TRAVEL																								
	21	Gov't. Employee Travel																								
	27	Non-Gov't. Empl. Travel																								
D	25	CONTRACTUAL SERV.																								
F	41	GRANTS																								
C&E		OTHER OBJ. GROUPS																								
C	22	Transportation of Things																								
C	23	Rents, Consum. & Utilities																								
C	24	Printing																								
C	26	Supplies/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 (%)																										

TRAVEL PLAN								
Originator		Code	Description	Authentication Block		Remarks		
1. Area/Agency	2. Location	3. Fiscal Year	4. Activity	5. Element				
				6. Revision Number	7. Prepared by			
				8. Date Prepared	9. Approved by			
				10. Date Approved				
11. COMPONENT/ WORK ORDER	12. CODE	DESCRIPTION		13. TOTAL	14. QUARTERLY FINANCIAL PLAN		15. Not Funded	
			Object Class 21:		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
			Total 21					
			Object Class 27:					
			Total 27					
			Object Class 22:					
			Total 22					
TOTAL TRAVEL PLAN								
16. TRAVEL CEILING								

11. COMPONENT/ WORK ORDER	12. CODE	13. TOTAL	14. QUARTERLY FINANCIAL PLAN				15. Not Funded
			1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
	Object Class 25	Total 25					
	Object Class 4E	Total 4E					
	Object Class (not used)	Total					
	Object Class 25	Total 25					
	Object Class 2E	Total 2E					

11. COMPONENT/ WORK ORDER	12. CODE	13. TOTAL	14. QUARTERLY FINANCIAL PLAN				15. Not Funded
			1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
	Object Class 26	Total 26					
	Object Class 31:	Total 31					
	Object Class 32	Total 32					
	Object Class 33	Total 33					
	Object Class (INDIRECT)	Total 33					
	TOTAL	Total					

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
☐ (A) CONTRACT ☐ (B) CFR

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 LINE ITEM BUDGET		Code		Code		Code		Code			
		Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation	Code	Code	Code	Code	Code	Code	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																			
CBE		OTHER OBJ. GROUPS																			
C	22	Transportation of Things																			
C	23	Rents, Comm. & Utilities																			
C	24	Printing																			
C	26	Supplier/Materials																			
E	31	Equipment																			
E	32	Lands and Structures																			
E	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 (%)																					

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

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

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		Code		Code		Code	
					Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation									
PERSONNEL SERVICES			A 61-92																		
TRAVEL			B																		
Gov't. Employee Travel			21																		
Non-Gov't. Empl. Travel			27																		
CONTRACTUAL SERV.			D 25																		
GRANTS			F 41																		
OTHER OBJ. GROUPS			C&E																		
Transportation of Things			C 22																		
Rents, Comm. & Utilities			C 23																		
Printing			C 24																		
Supplies/Materials			C 26																		
Equipment			E 31																		
Lands and Structures			E 32																		
Investments & Trans.			E 33																		
INDIRECT																					
TOTAL FIN. PROGRAM PLAN			15.																		
Less: Estimated Pay Cost			16.																		
Less: Quarter Reimbursement			17.																		
Less: Other Reimbursement			18.																		
TOTAL ALLOCATION (CY)			19.																		
VARIANCE (%)			20.																		

6. Date Approved _____ 7. Quarter 1 2 3 4

8. Revision No. _____

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

FORM H

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. TOTAL LINE ITEM BUDGET		14. PROGRAM COST ACCOUNTS DISTRIBUTION COMPONENT WORK ORDER													
		DESCRIPTION				1st Quarter		2nd Quarter		3rd Quarter		4th Quarter																	
						Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation														
A	64-92	PERSONNEL SERVICES																											
B		TRAVEL																											
	21	Gov't. Employee Travel																											
	27	Non-Gov't. Empl. Travel																											
D	25	CONTRACTUAL SERV.																											
F	41	GRANTS																											
C&E		OTHER OBJ. GROUPS																											
C	22	Transportation of Things																											
C	23	Hous. Comm. & Utilities																											
C	24	Printing																											
C	26	Supplier/Materials																											
E	31	Equipment																											
E	32	Land and Structures																											
E	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 (%)																													

**BUREAU OF INDIAN AFFAIRS
FINANCIAL PROGRAM PLAN
[(F) CETA]**

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

9. O G C O D E	10. O b j e c t C o d e	11. D E S C R I P T I O N	12. Q U A R T E R L Y F I N A N C I A L P R O G R A M P L A N						13. T O T A L L I N E I T E M B U D G E T	14. P R O G R A M C O S T A C C O U N T D I S T R I B U T I O N C O M P O N E N T A M O U N T O R D E R						
			1st Quarter		2nd Quarter		3rd Quarter			4th Quarter		Code	Code	Code	Code	Code
			Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation						
A	04-92	PERSONNEL SERVICES														
B		TRAVEL														
	21	Gov't. Employee Travel														
	27	Non-Gov't. Empl. Travel														
D	25	CONTRACTUAL SERV.														
F	41	GRANTS														
CBE		OTHER OBJ. GROUPS														
C	22	Transportation of Things														
C	23	Rents, Comm. & Utilities														
C	24	Printing														
C	26	Supplies/Materials														
E	31	Equipment														
E	32	Lands and Structures														
E	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 (%)														

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

BUREAU OF INDIAN AFFAIRS
 FINANCIAL PROGRAM PLAN
 [(G) OTHER]

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		Code		Code		Code	
			Plan	Obligation	Plan	Obligation	Plan	Obligation	Plan	Obligation									
A	64 92	PERSONNEL SERVICES																	
B		TRAVEL																	
	21	Gov't. Employee Travel																	
	27	Non-Gov't. Empl. Travel																	
D	23	CONTRACTUAL SERV.																	
F	41	GRANTS																	
C&E		OTHER OBJ. GROUPS																	
C	22	Transportation of Things																	
C	23	Rents, Comm. & Utilities																	
C	24	Printing																	
C	26	Supplies/Materials																	
E	31	Equipment																	
E	32	Buildings and Structures																	
E	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 (CV)																		
20.	VARIANCE (X)																		

TRIBAL COURT MONTHLY EXPENDITURE RECORD

[illegible]

Appropriation

Previous Month's Bal.

[illegible]

Originator	Code	Description
1. Area/Agency		
2. Location		
3. Fiscal Year		
4. Activity		
5. Element		

CHAPTER 18: Management Information System

- A) Monthly Summary of Collected Funds
- B) Monthly Caseload Report
- C) Monthly Workload Report

RECOMMENDATION 7

THE COURT SHOULD DEVELOP AND IMPLEMENT A MANAGEMENT INFORMATION SYSTEM.

The Menominee court is currently required by the BIA to collect certain data for monthly and annual reports. Collection of some of the data may be duplicative of what is already on computer forms and mailed by tribal police to Brigham City, Utah for BIA statistical use. The information on the monthly and annual reports as currently reported provide minimal management information. Project staff could not identify any management use for these reports by the BIA.

Copies of annual and monthly reports were collected at the Menominee court. The annual report contained:

- civil cases, broken down by type
- cases heard and pending before the Supreme Court
- narrative report from probation officer
- quarterly report containing:
 - number of criminal cases
 - number of traffic and civil cases
 - number of juvenile cases
 - amount of fines collected
 - amount of court costs collected
 - grand totals for each of above.

The 1982 monthly report contained:

- number of cases broken down by civil, criminal, juvenile
- narrative report on progress and objectives of the court
- offenses listed individually with fine and court cost.

These reports should be designed to be a more valuable management tool. It is the Center's recommendation that a more useful management information system and forms be developed. The BIA should decide what information it needs to determine funding, staffing, facilities and equipment needs of the court. (See Charts 6, 7, 8, and 9 for recommended formats.)

In addition the Menominee court is interested in purchasing IBM word processing equipment. (See Appendix F: Description of IBM Word Processing Equipment.) Center staff could work with the IBM representative to develop report formats for case-load activity, financial information and any other management information the court or the BIA determine either useful or necessary. Creating management information through the word processor would eliminate the need to manually generate the reports described in Charts 6-9, and require no more clerical time than is currently utilized in doing the present reports. Collection of all of the data in the recommended formats would allow both the court and the BIA to more accurately evaluate and determine future court needs. Management information would be available to document and justify funding proposals for the Menominee court.

MONTHLY STATISTICAL REPORT

Each month the court should prepare for itself, the Tribe and the Bureau of Indian Affairs a summary of the Court's activity and status. This information should be in a standard format. This set of reports would be substituted for any existing monthly reports.

The monthly report would include information on money collected/ disbursed, expenditures, caseload activity, and additional court activity. The summary of the monies collected and disbursed could be summarized as noted in the following chart. For expenditures the court could use form M from the Expenditure section of this manual. The court caseload and activity reports could be prepared on the following forms (as described in the instructions).

(Monthly Summary of Collected Funds)

Month of _____, 198__

	Court Funds				Trust	Pass Through Funds			
	Fines	Costs	Fees	Total	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 _____

(MONTHLY CASELOAD REPORT)

For month _____, 19____

	Criminal	Traffic	Juveniles				Civil	Probate			
	(Adult)	Non-Moving	Moving	ICWA Rights	Custody/Parental Adoptions	Criminal	Truancy	Money	Paternity	(Estates)	Total
<u>Trial Court</u>											
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 1 Month											
14. Warrant Before Disp.											
15. Active Cases											
<u>Appellate Court</u>											
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____

	<u>NUMBER</u>
(1) <u>Counseling</u>	
(A) Court Procedures	_____
(B) Domestic Relations	_____
(C) Legal Procedures	_____
(2) <u>Probation Department</u>	
(A) Presentence Reports	_____
(B) New Adult Probationers	_____
(C) New Juvenile Probationers	_____
(D) Restitution Payments	_____
(3) <u>Post Judgment Activities</u>	
(A) Garnishments	_____
(B) Enforcement of Foreign Judgments	_____
(e.g., child support)	_____
(4) <u>Other Activities</u>	
(A) Marriages	_____
(B) Occupational Driver's Licenses	_____
(C) Courtesy Letters (bad checks)	_____
(D) Search Warrants	_____
(E) Paternity (enrollment)	_____

Dated _____

Prepared by _____