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Attorneys for Plaintiffs

COURT OF INDIAN OFFENSES

WESTERN REGION – BUREAU OF INDIAN AFFAIRS (BIA)

ALICE TYBO, et al.,

Plaintiffs,

v.

STEVEN MCDADE, et al.,

Defendants,

TE-MOAK TRIBE OF WESTERN
SHOSHONE INDIANS OF NEVADA and four
constituent bands – BATTLE MOUNTAIN
BAND, ELKO BAND, SOUTH FORK BAND,

**CASE NO.: CIV-24-WR11
Consolidated with CIV-24-WR12**

**MOTION TO SUBMIT SURREPLY
AND MEMORANDUM IN
SUPPORT OF SURREPLY AND
RESPONSE TO COURT'S AUGUST
21, 2025, DOCUMENT
PRODUCTION ORDER**

AND WELLS BAND,

Counterclaimants,

v.

JOSEPH HOLLEY, ALICE TYBO, DUANE GARCIA SR., ANDREA WOODS, LARRY YAEGER, PAULA GARCIA, JULIUS HOLLEY, DAVIS GONZALES, THALIA MARIN, SUSAN ZAZUETA, DONNA HILL, RAYMOND GONZALES, FRANK LEYVA, DOYLE TYBO, DERRICK TYBO, CLARINDA GUZMAN, VYONNE WINAP, JENNY KOERBER, SHAWNI HICKS, RONNIE WOODS, HARLEY REYNOLDS, DALLAS SMALES, BRANDON REYNOLDS, TYLER REYNOLDS, AMBER PEAHEY, RAQUEL YEPEZ, AURORA ABOITE, CHARLOTTE HEALEY, JOSE SALAZAR, WENDELL HAYES, and JOHN DOES 1-10 (all as separate individuals); and ROE ENTITIES 1-10.

Counterclaim Defendants.

HOUSING AUTHORITY OF THE TE-MOAK TRIBE
OF WESTERN SHOSHONE INDIANS OF NEVADA

Intervenor Plaintiff.

And All Related Matters.

On August 20, 2025, Defendants filed their Reply to Plaintiffs' Opposition to Defendants' Request for Immediate Stay. Plaintiffs move the Court to accept and submit this surreply in response to a new argument raised for the first time in Defendants' Reply. In addition, and included with their Surreply, Plaintiffs submit documents requested by the Court in its August 21, 2025, Order.

**MEMORANDUM IN SUPPORT OF SUR-REPLY AND RESPONSE TO COURT’S
AUGUST 21, 2025, DOCUMENT PRODUCTION ORDER**

A. THE C.F.R. COURT DID NOT INVALIDATE HOLLEY COUNCIL RESOLUTION 21-TM-07 BECAUSE JUDGE HARLAN STAYED HER ORDER IN 21-TM-07

Defendants argue in their Reply that Tribal Council Resolutions passed after the C.F.R. Court’s initial Order in 21-TM-07 are invalid and cannot be relied upon. Reply at 4. Defendants’ argument is a blatant, if not outright sanctionable, misrepresentation of the previous litigation and this Court’s *stayed* decision in 21-TM-07.

Judge Harlan issued a default judgment in 21-TM-07, on August 24, 2021. Exhibit 1. Judge Harlan then issued a Sua Sponte Order of Modification and Clarification on September 9, 2021. Exhibit 2. On September 15, 2021, counsel for Defendants in that case filed a Notice of Appeal and Opening Brief in Support of Appeal, alleging, *inter alia*, (1) lack of personal jurisdiction due to improper service; (2) due process violations due to issuance of a default decision prior to expiration of the time to respond; (3) lack of subject matter jurisdiction; and (4) failure to state a claim on which relief could be granted due to suit against Tribal Council members in their individual capacities, requesting that they *as individuals*, take official action to reappportion the Tribal Council.

Counsel for Defendants in 21-TM-07 did request a stay pending appeal but did *NOT* cite the erroneous stay provision relied upon by Defendants in this case. Exhibit 3. Judge Harlan, in staying her decision, relied *sua sponte* on 87-ORD-TM-03, perhaps because it was readily available online. Exhibit 4. Accordingly, Defendants unsubtle attempt to impute gamesmanship to Plaintiffs in this case (some of whom overlap with Defendants in 21-TM-07) is wholly unfounded. Counsel in 21-TM-07, *never* relied upon 87-ORD-TM-03, as grounds for granting their requested stay.

Relatedly, Defendants have obviously failed to connect the dots in their argument. While Defendants first argue that Judge Harlan’s initial Order prevents Plaintiffs from relying on Tribal Council Resolution 21-TM-07 in support of their Opposition, Defendants later acknowledge the decision was stayed. As such, and because there is no record that Judge Harlan’s stay has been lifted, Plaintiffs validly rely on Tribal Council Resolution 21-TM-07.

Resolution 21-TM-07, passed on August 17, 2021, only four years ago and before the disputed elections began, provides that the Tribal Council is “in the process of *expanding* the Te-Moak Tribal Law and Order Code” and “has the *option* to utilize the Code of Federal Regulations to arbitrate cases that come before the Te-Moak Courts until the Te-Moak Law and Order Code Ordinance is updated accordingly.” (Emphasis added). The Resolution concludes by providing:

NOW THEREFORE BE IT RESOLVED THAT, by adoption of this resolution, the Te-Moak Tribal Council authorizes the use of the Code of Federal Regulations to be utilized in the interim, until the Law and Order Code meets the necessary standards to arbitrate cases in the Tribal Court.

The Tribal Council’s resolution could not be clearer. The Tribe, as of 1987, had—and to this day still has—in place a Tribal Code, but to the extent that Code was lacking or unclear in some respect, the Tribe chose to adopt the Code of Federal Regulations to govern suits before the Tribal Court.

B. ORDINANCE 87-ORD-TM-02, INCLUDING STAY PROVISION 1-3-7(5), IS THE OPERATIVE TRIBAL LAW GOVERNING STAYS

Defendants also, in their Reply, falsely allege that the stay provision Plaintiffs cite “does not have an ordinance number.” Reply at 4. This too is incorrect.

Plaintiff’s Exhibit B, included as an excerpt for ease of reference, is the relevant portion of Plaintiff’s Exhibit E—the full Tribal Code as it stands at present. Exhibit E reflects that it is Ordinance number 87-ORD-TM-02. Exhibit E further reflects, via the handwritten note at the top,

that it was “rec’d 8/17/21 TMK Special meeting,” meaning it was the current version of the Code being considered and referenced in the Tribal Council Resolution 21-TM-07, on August 17, 2021.

**C. ADDITIONAL DOCUMENTARY SUPPORT FOR PARAGRAPH 3 OF EXHIBIT 3,
IN RESPONSE TO AUGUST 21, 2025, COURT ORDER**

In response to this Court’s Order on August 21, 2025, Plaintiffs have done additional historical and legal research and offer for the Court’s further consideration the following supplemental documents evidencing the currentness of 87-ORD-TM-02, including Stay Provision 1-3-7(5):

1. July 15, 1987, meeting minutes of the Te-Moak Tribal Council;
2. Tribal-BIA correspondence confirming Te-Moak Resolution 21-TM-07;
3. Tribal Council Resolution, 21-TM-134 (September 9, 2021), adopting “Te-Moak Tribal Court 2021 Manual”;
4. Te-Moak Tribal Court 2021 Manual;
5. Complete 87-ORD-TM-02 Code, previously excerpted for Plaintiffs’ Opposition, Exhibit B.

1. JULY 15, 1987, MEETING MINUTES OF THE TE-MOAK TRIBAL COUNCIL

The July 15, 1987, meeting minutes of the Tribal Council, “Item #1, confirm that the Tribal Council voted to approve “Tribal Codes [sic] Ordinance 87-ORD-TM-02”, containing Plaintiffs’ proffered stay provision. Exhibit 5. Item #2 in the meeting minutes goes on to state, inconsistently, that the Tribal Council, also, at the same meeting, approved Tribal Court Ordinance 87-ORD-TM-03, containing Defendants’ proffered stay provision.

**2. TRIBAL-BIA CORRESPONDENCE CONFIRMING TE-MOAK RESOLUTION
21-TM-07**

The Tribal-BIA correspondence attached as Exhibit 6, confirms the validity of Tribal Council Resolution 21-TM-07, which notes review and expansion of 87-ORD-TM-02, containing relevant stay provision 1-3-7(5), and also approves use of the Code of Federal Regulations in the interim.

**3 & 4. TRIBAL COUNCIL RESOLUTION, 21-TM-134 (SEPTEMBER 9, 2021),
ADOPTING “TE-MOAK TRIBAL COURT 2021 MANUAL” AND THE TE-
MAOK TRIBAL COURT 2021 MANUAL**

Tribal Council Resolution 21-TM-34 (September 9, 2021), attached as Exhibit 7, approving the “Te-Moak Tribal Court 2021 Manual,” attached as Exhibit 8, confirms that, as of 2021, the Tribal Council understood and authorized stays to be within the discretion of the Court, consistent with Tribal Code provision 1-3-7(5). Specifically, Section 7-NN, “Stay of Proceedings to Enforce a Judgment,” in the 2021 manual provides:

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

Section 2-D (d) further provides that “[o]nly the Tribal Court Judge may stay a sentence or decision pending the appeal process.”

**5. COMPLETE 87-ORD-TM-02 CODE, PREVIOUSLY EXCERPTED FOR
PLAINTIFFS’ OPPOSITION, EXHIBIT B**

Plaintiffs also provide, as Exhibit 9 for the convenience of the Court, a full clean copy of 87-ORD-TM-02.

DATED this 22nd day of August, 2025.

SKENANDORE WILSON, LLP

/s/ Rollie Wilson

Rollie Wilson, Esq.

Jamie Konopacky, Esq.

Kelby Welsh, Esq.

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SEMENZA RICKARD LAW

/s/ Jarrod L. Rickard

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/s/ Charles R. Zeh

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2025, the foregoing MOTION TO SUBMIT SUR-REPLY AND MEMORANDUM IN SUPPORT OF SUR-REPLY AND RESPONSE TO COURT'S AUGUST 21, 2025, DOCUMENT PRODUCTION ORDER was filed as follows:

Original filed with Court via email as follows:

Jonelle Clytus, J.D.
Tribal Government Specialist
Bureau of Indian Affairs, Western Region
Tribal Government Services
2600 N. Central Avenue
Phoenix, AZ 85004
jonelle.clytus@bia.gov

Via E-mail to:

Attorney for Defendants

Paul Tsosie, Esq.: paul@tsosie-law.com
Tsosie Law
8977 S. 1300 W. Ste 2101
West Jordan, UT 84088

/s/ Catherine Wiland

Catherine Wiland
Paralegal to Rollie E. Wilson and Jamie L.
Konopacky

EXHIBIT 1

AUG 24 2021

Time Recorded 3:48pm
Court Clerk *Fluright*

**IN THE COURT OF INDIAN OFFENSES
FOR THE WESTERN REGION**

ELKO BAND, a constituent band of the)
Te-Moak Tribe, ELKO BAND COUNCIL,)
the governing body of the Elko Band,)
DAVIS GONZALES, Chairman of the Elko)
Band,)

Plaintiff,)

Case No.: CIV-21-WR07

vs)

JOSEPH HOLLEY, Tribal Chairman;)
ALICE TYBO, Tribal Council member,)
DUANE GARCIA, SR., Tribal Council)
Member; ANDREA WOODS, Tribal)
Council Member; JULIA OPPENHEIN,)
Tribal Council Member; PAULA GARCIA,)
Tribal Council Member; DOES I-X, and)
ROE ENTITIES I-X,)

Defendants.)

ORDER GRANTING REQUESTED RELIEF UPON DEFAULT

NOW on this 24th day of August, 2021, this matter comes before the undersigned Chief Magistrate upon a Civil Complaint filed by the Plaintiff Band. The Plaintiff's Legal Counsel, Wes Williams, Jr., is present electronically. The Plaintiff Band is present electronically by and through its Chairman, Davis Gonzales. No other parties appear. Being advised in the premises, the Court does hereby FIND and ORDER as follows:

1. The Court FINDS that jurisdiction and venue are proper as the Bureau of Indian Affairs has resumed the Te-Moak Tribe of Western Shoshone Indians of Nevada's judicial services and same has not been wholly or partially reinstated as of this date.

2. The Court FINDS the Defendants have failed to appear and have not filed an answer in this case after proper service.

3. The Court FINDS the Defendants are in default and a Default Order is appropriate.

4. That a Injunctive Relief is appropriate and the Defendants are hereby ENJOINED from continuing to act in a manner which is arbitrary, capricious and an abuse of discretion by ignoring their responsibilities to adhere to the Constitution of the Te-Moak Tribe.

5. That the Court issues a specific FINDING that Plaintiffs are entitled to declaratory relief as follows:

a. The Defendants have improperly apportioned the Tribal Council seats in a manner which that violates the provisions of Article 4 of the Constitution;

b. The Apportionment Ordinance, 83-ORD-TM-01 is inconsistent with Article 4 of the Constitution which requires a one person - one vote and those parts that are inconsistent are hereby declared NULL and VOID.

c. That at no time does the Constitution of the Te-Moak Tribe allow for the question of apportionment to be determined by the Chairman acting solely and the Court declares the Te-Moak Council's approval of the letter written by Joseph Holley on June 11, 2020 to be unconstitutional and therefore causing the issue of apportionment as approved by the Tribal Council is NULL and VOID.

d. That any and all actions taken by the Te-Moak Tribal Council since the "re-apportionment of 2020" are hereby declared NULL and VOID and are to be disregarded by any agency or entity as invalid.

e. That proper apportionment based upon a one person - one vote should be based upon the following information:

Elko Band with 1,606 members:

Battle Mountain Band with 429 members:

Wells Band with 171 members

South Fork Band with 199 members

These numbers are represented in the letter issued by Chairman Joseph Holley and reportedly provided by the tribe's enrollment department. Using these numbers in a one person - one vote circumstance, the Elko Band is the largest band comprising more than half of the total members of the Tribe. The Te-Moak Tribal Council has ignored the provisions of the Constitution and therefore its apportionment is NULL and VOID. The numbers listed herein are to be used in

calculating the new apportionment and the Elko Band should have four representatives in an 8 member council, with Battle Mountain having two representatives, and the remaining two bands having one representative each. Or in the alternative, the Elko Band should represent 70 percent of any alternate composition of the Te-Moak Tribal Council.

6. That a Writ of Mandamus is appropriate and the Defendants are hereby ORDERED to engage in a reapportionment of the Tribal Council seats in such manner that complies with the Te-Moak Constitution, Article 4 as well as all other Te-Moak Ordinances.

7. That the Court FINDS the Defendant's willful disregard of the jurisdiction of this Court is flagrant and without good cause, therefore this Court awards the Plaintiffs attorneys fees and costs. The Plaintiffs are ordered to submit a detailed attorney invoice to the Court within 5 days of this Order and provide a copy to each individual Defendant. Each individual Defendant will be ordered to pay 1/8 of the fees and costs within 10 days of receipt of the invoice or be held in contempt of court with a possible sentence which includes a fine and/or incarceration.

IT IS SO ORDERED.



MARSHA HARLAN, CHIEF MAGISTRATE

EXHIBIT 2

SEP 09 2021

Time Recorded 8:00 AM
Court Clerk [Signature]

**IN THE COURT OF INDIAN OFFENSES
FOR THE WESTERN REGION**

ELKO BAND, a constituent band of the)
Te-Moak Tribe, ELKO BAND COUNCIL,)
the governing body of the Elko Band,)
DAVIS GONZALES, Chairman of the Elko)
Band,)

Plaintiff,)

vs)

JOSEPH HOLLEY, Tribal Chairman;)
ALICE TYBO, Tribal Council member,)
DUANE GARCIA, SR., Tribal Council)
Member; ANDREA WOODS, Tribal)
Council Member; JULIA OPPENHEIN,)
Tribal Council Member; PAULA GARCIA,)
Tribal Council Member; DOES I-X, and)
ROE ENTITIES I-X,)
Defendants.)

Case No.: CIV-21-WR07

SUA SPONTE ORDER OF MODIFICATION AND CLARIFICATION

NOW on this 8th day of September, 2021, this Court sua sponte, revisits its order of August 24, 2021 and makes the following modifications and clarifications, to wit:

1. In its Order of August 24, 2021, in paragraph 5, subsection (d), this Court held that "all actions taken by the Te-Moak Tribal Council since the "re-apportionment of 2020" are hereby declared NULL and VOID and are to be disregarded by any agency or entity as invalid." The Court, sua sponte, does modify its order this date to state that it will not hold the actions of the Tribal Council as NULL and VOID for the reason that same would be a substantial disruption to tribal government and could potentially create irreparable harm to the Te-Moak Tribe of Western Shoshone Indians. Rather than voiding all actions, this Court does hereby ORDER that any and decisions of the Tribal Council from the date of this Court's original Order of August 24, 2021 shall be Null and Void until such time as the Tribal Council properly apportions the Council representation to comply with the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

2. That the Order of August 24, 2021 in paragraph 7, requires the Defendants, individually to pay attorney's fees. The Court does hereby modify and amend its order, sua sponte, to require the Te-Moak Tribal Council to reimburse the Elko Band Council for attorney's fees and same is to be paid within 10 days of this Order.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Marsha Harlan', with a stylized flourish at the end.

MARSHA HARLAN, CHIEF MAGISTRATE

EXHIBIT 3

SEP 15 2021

Time Recorded 1:58 pm
Court Clerk *[Signature]*

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OBA # 8312
AZ # 34756
Attorney for the Tribal Council
Te-Moak Tribe of Western Shoshone Indians of Nevada

**IN THE APPELLATE COURT
FOR THE COURT OF INDIAN OFFENSES FOR THE WESTERN REGION**

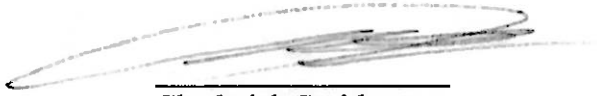
ELKO BAND , a constituent band of the Te-Moak;)
ELKO BAND COUNCIL , the governing body of the)
Elko Band; and)
DAVIS GONZALES , Chairman of the)
Elko Band,)
)
Plaintiffs/Appellees,)
vs.) Case No:
)
) CIV 21-WR07
JOSEPH HOLLEY , Tribal Chairman;)
ALICE TYBO , Tribal Councilmember;)
DUANE GARCIA, SR. , Tribal Councilmember;)
ANDREA WOODS , Tribal Councilmember;)
JULIA OPPENHEIN , Tribal Councilmember;)
PAULA GARCIA , Tribal Councilmember; and)
ROE ENTITIES I-X ;)
)
Defendants/Appellants.)

MOTION TO STAY ORDER

COMES NOW, Defendants/Appellants, and move the Court to stay orders of the Court of Indian Offenses Chief Magistrate Harland ("Harland") including her September 9, 2021 *Sua Sponte* Order of Modification and Clarification and August 24, 2021 Order Granting Requested Relief upon Default pending exhaustion of this appeal. There is no money judgement or financial

damages awarded to the Plaintiffs/Appellees, therefore there is no need for any security or bond on appeal. Defendants/Appellants have also filed a motion to stay these orders with the Court of Indian Offenses.

Submitted September 15, 2021.



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Attorneys for the
Te-Moak Tribal Council

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Stay was emailed or mailed by through the U.S. Postal Service to the following persons on September 15, 2021.



Chadwick Smith

Wes Williams, Jr
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wwilliamslaw@gmail.com
Attorney for Elko Band

SEP 15 2021

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OBA # 8312
AZ # 34756
Attorney for the Tribal Council
Te-Moak Tribe of Western Shoshone Indians of Nevada

COMES NOW Defendants/Appellants and appeal Western Region Court of Indian Offenses (“CIO”) Chief Magistrate Harland’s (“Harland”) September 9, 2021 *Sua Sponte* Order of Modification and Clarification and August 24, 2021 Order Granting Requested Relief upon Default. Before the CIO may adjudicate an action brought before it, it must have subject matter

jurisdiction. The CIO had no jurisdiction over this cause of action arising on the Te-Moak Reservation after November 23, 2020 because: 1) Defendants/Appellants were not served the Complaint filed herein on July 16, 2021; 2) Harland entered her “Order Granting Requested Relief Upon Default” before the time for Defendants to answer the Petition ran; 3) Harland has no jurisdiction where the issue is a suit against the tribe or involves an internal tribal government dispute; 4) Harland has no jurisdiction where there is no waiver of sovereign immunity by Te-Moak; 5) the Te-Moak tribe withdrew from the CIO’s jurisdiction; 6) the CFR does not apply to the Te-Moak tribe; and 7) Harland has no jurisdiction where the Bureau of Indian Affairs (“BIA”) has approved a tribal law and order code that establishes a tribal court. Further, the Harlan erred because Plaintiffs/Appellees failed to state a claim on which relief can be granted pursuant to Federal Rules of Civil Procedure (“F.R.C.P.”) 12 (b)(6) because Defendants/Appellants were explicitly sued in their individual capacity, and only the Te-Moak Council can reapportion Tribal Council seats. By failing to name Te-Moak Tribal Council or Defendants/Appellants in their official capacity, there is no party who can carry out reapportionment and no relief can be granted.

In *U.S. v. Forma*, 42 F.3d 759 (2d Cir. 1994), the court held that, “if there was no subject matter jurisdiction over the Forma’s counterclaim, then the default judgment entered against the Government is void and must be vacated, *See* Fed.R.Civ. P. 60(b)(4).” Therefore, this Court should reverse the CIO’s orders and dismiss the case.

I. FACTS

On November 23, 2020, the Te-Moak Tribe of Western Shoshone Indians, a federally recognized tribe or nation, by its duly elected and serving Tribal Council (“Te-Moak”) enacted Resolution 20-TM-129, divesting the CIO of jurisdiction over judicial proceedings within the Te-Moak reservation.

On December 1, 2020, Te-Moak and *the Elko Band* each filed a notice of Lack of Jurisdiction with the CIO that Te-Moak Resolution passed on November 23, 2020, reestablishing the Te-Moak Tribal Court under its previously BIA approved Tribal Law and Order code,¹ divested the CIO of jurisdiction.

On July 16, 2021, Plaintiffs/Appellees filed their Complaint for Injunctive, Declaratory, and Mandamus Relief against Defendants/Appellants in their individual capacities

On July 22, 2021, Plaintiffs/Appellees requested and the court issued Summons to each Defendant/Appellee. The Certification of the Summons state the Acting Court Clerk mailed a copy of the petition to the Defendants/Appellants by Certified Mail-Restricted Delivery” *See* Exhibit “A”, Summons.

On July 26, 2021, Shael _____ (last name cannot be read) appears to have signed a green card return of service by certified mail card (PS Form 3811) for receipt of certified mail for Defendants/Appellants. Notes on the compilation of green cards for each Defendant/Appellant state in handwriting “CIV 21- WR07, July 22, 2021 Summons.” *See* Exhibit “B”, Green Cards. Although the Summons reflect they were served by Certified Mail-Restricted Deliver, only one person signed for all of the Defendants/Appellants, not the individual the mail was directed to who must sign because the certified mail was by “Restricted Delivery.”

On September 15, 2021, Chairman Holley signed an statement that although he received a Summons by certified mail, he and other Defendants/Appellants did not receive a Complaint or Petition with the Summons. *See* Exhibit “C”, Statement of Joseph Holley.

¹ The Te-Moak Law and Order Code previously approved by the BIA on July 11, 1989, included a Te-Moak Tribal Court. A Tribal Court was established and sometime in January 2017, it ceased operations. On November 23, 2020, the Te-Moak Council passed Resolution No. 20-TM-129 reinstating the Tribal Court.

II. ARGUMENT AND AUTHORITY

A. HARLAND'S VIOLATION OF CFR AND FEDERAL RULES VOIDS HER ORDER GRANTING REQUESTED RELIEF UPON DEFAULT.

1. THE DEFENDANTS/APPELLANTS WERE NOT SERVED WITH THE COMPLAINT.

Harland's August 24, 2021 "Order Granting Requested Relief Upon Default" ("Order") in this case, *Elko Band v Holley et al.*, Case No CIV 21-WR07 ("*Elko*"), was wrongfully issued because Defendants/Appellants *were never served the Complaint* in this case and the Summons was not served on each Defendant/Appellant by restricted delivery certified mail. The Summons for the Complaint filed herein was served on July 26, 2021 on an unidentifiable party without a Complaint in violation of Federal Rules of Civil Procedure ("F.R.C.P.") Rule 4 (c).² Although the Certificate of Service of the Summons indicates it was served by Restricted Delivery, it is evident none of the Defendants/Appellants were served by restricted delivery mail because none of their signatures appear on the "green cards" and instead a stranger to the proceedings signed for the Certified Mail. How can Harland assert jurisdiction over a case if the Defendants/Appellants have never been served a Complaint?

2. THE TIME FOR DEFENDANTS/APPELLANTS TO ANSWER OR OTHERWISE PLEAD HAD NOT EXPIRED WHEN HARLAND ENTERED HER DEFAULT ORDER.

Harland entered her default order on August 24, 2021. By court rule, Defendants had thirty (30) days to answer the petition after they were properly served.³ Because Harland entered her

² FRCP Rule 4 (c) SERVICE.

(1) *In General*. A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by [Rule 4\(m\)](#) and must furnish the necessary copies to the person who makes service.

³ Court of Indian Offenses of the Western Region LOCAL COURT RULES

PART II. RULES OF CIVIL AND CRIMINAL PROCEDURE TITLE I. COMMENCEMENT OF ACTION.

default order before the time to answer expired, it was wrongfully issued. Further, the Plaintiffs must move for a default judgment and the Court must set a hearing with defendants receiving ten (10) days' notice. *See* CFR Court Rule 4.1.⁴ Mathematically, it would take forty days after service of a summons and Complaint before a hearing could be held and the court could issue a default judgment. Harland issued her default Order twenty-eight days after the summons was issued. Harland issued her order before the 30 days expired to answer. Further, notice of an August 24, 2021 hearing for default was given on August 18, 2021 which is five days' notice and less than the ten (10) days required by CFR Court Rule 4.1.

Therefore, Harland's violations of CIO rules void her August 24, 2021 "Order Granting Requested Relief Upon Default" but demonstrates her dogged determination to decide internal tribal affairs without jurisdiction or authority.

B. THE CIO HAD NO JURISDICTION OVER THIS CASE.

Judge Harland wrongfully found that the CFR court had jurisdiction and venue. *See* Order par. 1.

The Te-Moak Council unequivocally reestablished its previously created tribal court on November 23, 2020, by passing Resolution No 20-TM-129; therefore, in accordance with 25 C.F.R. §11.100(b)(3), the resolution terminates the CIO's jurisdiction over the Te-Moak

Rule 1.5 Service of Process. Service of process shall consist of delivering to the party served, a copy of the petition along with summons, issued by a Magistrate or Court Clerk, which advises the defendant that he is required to answer the petition within thirty (30) days or a default judgment will be entered against him. All documents required to be filed shall be served as under this rule, and except for the complaint, may be served on the attorney of a party. A civil action is deemed commenced by filing in the Court Clerk's Office a petition and by the Court Clerk's issuance of summons thereon.

Rule 3.8 Defenses and Objections. (1) A defendant or other party against whom a claim has been made for affirmative relief shall have thirty (30) days from the date of service upon him to answer or respond to the claim.

⁴ TITLE IV. HEARINGS AND PRE-TRIAL MATTERS Rule 4.1 Motion Docket. The Court Clerk, under the supervision of the Magistrate, shall have the responsibility for placing all pending motions on the Motion Docket. Notice of case setting shall be distributed to all parties at least ten (10) days prior to the Motion Docket.

Reservation. In fact, the CIO acknowledged that the Te-Moak Council reestablished the Te-Moak court but found that it retained “concurrent jurisdiction” without citing any provision of law. *See Stevens et al. v. Elko Band et al.*, CIV 20-WR03, December 11, 2020, (“*Stevens*”) Order at p. 11⁵.

Regardless, the CIO is not a tribal court, and it is absolutely prohibited “to . . . adjudicate any internal tribal government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction and . . . explicitly waives its tribal immunity by tribal resolution or ordinance.” *See* CFR §11.118(b) and (d). (Underlining added.)

1. THE CIO HAS NO JURISDICTION WHERE THE ISSUE IS A SUIT AGAINST THE TRIBE OR INVOLVES AN INTERNAL TRIBAL GOVERNMENT DISPUTE.

Harland wholly failed to abide by CFR limitations on the CIO’s subject matter jurisdiction. *See* 25 CFR §11.118 (b).⁶ The core issue in this case is interpretation of the tribal Constitution, ordinances, and resolutions regarding apportionment of elected seats. No issue could more clearly constitute internal tribal affairs. The Te-Moak Tribal Council (the tribal governing body) did not pass a resolution granting the CIO subject matter jurisdiction over the instant case which is a suit

⁵ “[t]his Court finds the tribal council has no authority over a federally regulated Bureau of Indian Affairs operated Court of Indian Offenses, nor any of its cases. Further, if the Tribe operates a court, as a matter of sovereignty, the Court of Indian Offenses will continue to have concurrent jurisdiction until such time as the Secretary of the Interior of their designee terminates the operation of the Court on behalf of jurisdiction.” The CIO provided no citation for this authority.

⁶ § 11.118 What are the jurisdictional limitations of the Court of Indian Offenses?

(b) A Court of Indian Offenses may not adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction.

(c) In deciding who is a tribal official, BIA will give deference to a decision of the Court of Indian Offenses, acting as a tribal forum by resolution or ordinance of a tribal governing body under paragraph (b) of this section.

(d) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

for declaratory judgment of tribal law and injunctive relief against the Te-Moak Tribal Councilmembers by its constituent Elko Band Council regarding internal tribal affairs.

In *Takes Gun v. Crow Tribe of Indians*, 448 F.Supp. 1222 (D. Mont. 1978), the court held, "The Court of Indian Offenses is simply not empowered to decide cases in which the tribe is a party."

In a case involving the Te-Moak Tribe, the court in *U.S. Bancorp v. Ike*, 171 F. Supp. 2d 1122, 1127 (D. Nev, 2001) held, "The jurisdiction of the Court of Indian Offenses is specifically limited in that it does not have jurisdiction to adjudicate any claims that involve internal tribal government disputes." In *U.S. Bancorp*, the court framed the issue by stating, "The two groups of Te-Moak asserting tribal authority are the Mose Group and the Ike Group. The Mose Group asserts that the Ike Group ignored tribal laws during the last election, and then, when the results were contested, improperly obtained a restraining order through the Court of Indian Offenses which barred the Mose Group from entering the tribal offices and carrying out its leadership duties." In *U.S. Bancorp*, the court found it had no jurisdiction over internal tribal disputes and questioned the involvement of the CIO.

We agree with the Ike Group that we do not have jurisdiction to determine which group is the governing body of the Te-Moak. Deciding a question involving a tribal election dispute is solely a matter of tribal law, and we do not have jurisdiction to address this question. See, e.g., *Shenandoah v. United States Dep't of the Interior*, 159 F.3d 708, 712-13 (2nd Cir.1998) (holding that a federal court did not have jurisdiction to determine which member of the Oneida Tribe was the proper tribal representative, as the question involved purely tribal law); *Wheeler v. United States Dep't of the Interior*, 811 F.2d 549, 552-53 (10th Cir.1987) (affirming the district court's decision that it lacked jurisdiction when the controversy involved purely intra-tribal political controversies); *Boe v. Fort Belknap Indian Cmty. of Fort Belknap Reservation*, 642 F.2d 276, 278 (9th Cir.1981) (distinguishing a habeas remedy as a proper use of the federal court, from interference with tribal elections, an improper use); *Rosebud Sioux Tribe of South Dakota v. Driving Hawk*, 534 F.2d 98, 100 (8th Cir. 1976) (holding that federal courts cannot be used to supervise and decide issues that arise in tribal elections).

However, we also agree with the Mose Group that we do have jurisdiction to determine if the Court of Indian Offenses exceeded its jurisdiction when it issued a restraining order against the Mose Group. In *National Farmers Union Ins. Cos. v. Crow Tribe*, the United States Supreme Court held that "the District Court correctly concluded that a federal court may determine under § 1331 whether a tribal court has exceeded the lawful limits of its jurisdiction." 471 U.S. 845, 853, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985). In the case of the Te-Moak, its tribal court is the Court of Indian Offenses, established by 25 C.F.R. Ch. 1 §§ 11.1-11.32C, and administered by the Bureau of Indian Affairs ("BIA"). The jurisdiction of the Court of Indian Offenses is specifically limited in that it does not have jurisdiction to adjudicate any claims that involve internal tribal government disputes. 25 C.F.R. Ch. 1 § 11.104 (2001). Further, "[o]nce the tribal courts have acted, their determination of jurisdiction is subject to review in federal court." *Brown v. Washoe Housing Auth.*, 835 F.2d 1327, 1329 (10th Cir.1988). As stated above, the Ike Group does not dispute that the injunction issued by the presiding judge constitutes the Court of Indian Offenses interfering with the outcome of tribal elections.

The federal court's decision in *U.S. Bancorp*, occurred after the 1982 approval of the Te-Moak Constitution and 1989 approval of the Law and Order code, takes precedence over the CIO Appellate Court's decisions, and is binding on the CIO.

The CFR reflects the well-established law that internal tribal disputes are reserved to tribal courts. In *Sac and Fox Tribe of Mississippi in Iowa v. Bear*, 258 F.Supp.2d 938 (N.D. Iowa 2003), the court summarized the law regarding the lack of jurisdiction by federal courts over intra-tribal controversies which are reserved for tribal courts:

This Court is without jurisdiction to resolve intra-tribal disputes. See *Goodface v. Grassrope*, 708 F.2d 335, 339 (8th Cir.1983) (holding that where tribe has a "functioning tribal court, which the parties recognize as a court of competent jurisdiction to resolve tribal election disputes ... [it] is essential that the parties seek a tribal remedy ... [because] substantial doubt exists that federal courts can intervene under any circumstances to determine the rights of the contestants in a tribal election dispute."); *Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985) (affirming district court's holding that "resolution of ... disputes involving questions of interpretation of the tribal constitution and tribal law is not within the jurisdiction of the district court"); *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir.1996) (holding that federal courts do not have jurisdiction over intra-tribal disputes); *Ordinance 59 Ass'n v. Babbitt*, 970 F.Supp. 914, 927 (D.Wyo.1997)

("unless expressly waived or affected by Congressional enactment, [Indian tribes] have sovereign immunity over intra-tribal disputes such as those involving tribal government and membership").

Harlan had no jurisdiction over internal tribal affairs particularly this one which deals with apportionment of elected official seats.

2. THE CIO HAS NO JURISDICTION WHERE THERE IS NO WAIVER OF SOVEREIGN IMMUNITY BY TE-MOAK.

The CIO wholly failed to abide by its own CFR limitations on hearing cases against a tribe without an explicit waiver of sovereign immunity. 25 CFR §11.118 (d) provides that, "A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance." There is no waiver of sovereignty immunity by Te-Moak filed in this case. The CIO has no subject matter jurisdiction because of the CRF requirements for an affirmative waiver of sovereign immunity.

The CFR prohibition for the CIO to assert jurisdiction over the Te-Moak Tribal Council reflects the federal common law of sovereignty immunity and ensures a tribe's willing and informed consent to being sued in the CIO. In *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, (1978, the U.S. Supreme Court held, "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." It is settled that a waiver of sovereign immunity cannot be implied but must be unequivocally expressed. See *United States v. Testan*, 424 U.S. 392, 399 (1976), *United States v. King*, 395 U.S. 1, 4, (1969).

Because the Te-Moak Tribal Council did not enact an affirmative waiver of sovereign immunity for this case has required by 25 CFR §11.118 (d), the CIO has no jurisdiction over a suit against the Te-Moak Tribe or its Tribal Council.

3. THE TE-MOAK TRIBE WITHDREW FROM THE CIO'S JURISDICTION.

The Te-Moak Constitution and Law and Order code was enacted by virtue of the tribe's inherent sovereignty and pursuant to the Indian Reorganization Act of June 18, 1934, ch. 576, 48 Stat. 984 ("IRA"), and the BIA approved of the Constitution and Law and Order Code; these authorities are controlling as to tribal jurisdiction.

In accordance with the IRA, the Te-Moak Tribe's Constitution was approved by the Deputy Assistant Secretary of the Interior of Indian Affairs on August 26, 1982. The Te-Moak Law and Order Code was adopted in 1987 and approved by the BIA on July 11, 1989. The Tribe had a functional Tribal Court until sometime in 2018, when the CIO asserted jurisdiction. The Te-Moak Tribe has the authority to exercise its sovereignty through the tribal council and the chairman.⁷

By Ordinance. No. 87-ORD-TM-O2, the Te-Moak Council enacted general provisions reasserting jurisdiction over its reservation.⁸ By Ordinance. No. 87-ORD-TM-O3, the Te-Moak

⁷ In accordance with the Constitution Art. 4. Executive and Legislative Branch, Sec. 1. Governing Bodies: The executive and legislative powers of the Tribe shall be vested in a Tribal Council known as the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, and in Band Councils, one Band Council for each constituent Band of the Tribe and identified by the name of the Band.

⁸ TITLE I - GENERAL PROVISIONS. Chapter 1. Preliminary Provisions

1-1-1 Constitutional Authority

[T]his law and Order Code is being adopted pursuant to the authority vested in the Te-Moak Tribal Council under Article 4, Section 3 (n) of the Te-Moak Constitution as amended and approved August 26, 1982.

1-2-1 Jurisdiction.

It is hereby declared as a matter of Tribal Policy and legislative determination, that interests and the interest of the Te-Moak Tribe demand that the Tribe provide itself, its members and other person (s) living within the territorial jurisdiction of the Tribe as set forth in Article 2 of the Constitution of the Te-Moak Tribes . . . with an effective means to redress in both civil (as defined in Section 3-3-4 of the Tribal Court Ordinance) and criminal cases (as defined in Section 3-3-5 of the Te-Moak Tribal Court Ordinance) against Te-Moak Tribal members and Non-Indian members who through either their residence, presence, business, dealings, actions or failures to act or other significant minimum contacts with our Colonies and Reservations and/or its residents commit criminal offenses against the Tribe or Reservation incur civil obligations to persons or entitled to the tribe's protection. This action is deemed necessary as a result of the confusion and conflicts caused by the increased contacts and interaction between which the Tribe has not previously elected to exercise jurisdiction. The jurisdictional provisions of this Law and Order Code, to insure maximum protection for the Tribe, its members' and other residents of the South Fork Reservation, Elko Indian Colony, Battle Mountain Indian Colony and Wells Indian Colony, should be applied equally to all persons, members and non-members alike.

Council enacted provisions empowering a tribal court.⁹ According to the CIO, the Te-Moak Court ceased functioning and the BIA reassumed providing judicial services for the Te-Moak reservation in February 2018. *See Stevens* December 11, 2020 Order at p. 4. On November 23, 2020, the Te-Moak Council passed Resolution No. 20-TM-129 exercising its sovereign right to operate its own tribal justice system established in its Ordinance passed in 1987. On November 24, 2020, notice of the tribe's reestablishment of its justice system was sent to the Assistant Secretary of the Interior and the Tribal Justice Support Directorate, as provided by 25 C.F.R. §11.104 (b).

In a valid exercise of its sovereign rights, by passing Resolution 20-TM-129, the Te-Moak Council reasserted its tribal court's jurisdiction as originally enacted in 87-ORD-TM-O3 and approved by the Secretary of the Interior and withdrew from the CIO's jurisdiction.

The Te-Moak Tribe's Law and Order Code provides:

1-1-4. C.F.R. No Longer Applicable

Any and all provisions of the Code of Federal Regulations, Title 25, Part II, as presently constituted or hereafter constituted which deal with subject (sic) covered in this Law and Order Code or the purpose and/or spirit of this law and Order Code are declared to be no longer applicable to the Te-Moak Tribe Reservations and Colonies.

⁹ Chapter 3 - Tribal Court, 1-3-1 Creation and Establishment of Court
This Tribal Court is created under the Provisions in Article 8, Section 1 of the Constitution of the Te-Moak Tribe. All proceedings within the purview of the Law and Order Code and any additional ordinances hereafter adopted by the Te-Moak Tribe of Western Shoshone shall be under the jurisdiction of the Tribal Court.

1-3-2 Jurisdiction: The judicial power shall extend to all cases in law or equity arising under the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

1-3-5 Civil

A. Tribal Court shall have jurisdiction, over all civil matters and action as described within the Law and Order Code, as well as civil jurisdiction over all ordinances that may hereafter be passed by the Te-Moak Tribal Council, and amendments to the Code that may hereafter be adopted, and any person may file a civil cause of action in the Te-Moak Tribal Court wherein the cause of action arose within the exterior boundaries of the Te-Moak Tribe, and the court shall have jurisdiction thereof.

B. The civil jurisdiction of this court is not limited by the amount or value in controversy, including interest. 1-3-9 Tribal Law and Order Code: The Te-Moak Tribal Code shall apply the provision of this Court and any additional ordinances hereafter adopted by the Tribe.

Therefore, any reliance the CIO has made on the CFR to justify its assertion of jurisdiction is misplaced; its provisions do not apply to the instant case and cannot serve as the basis of jurisdiction over this case. The controversy in this case must be adjudicated in tribal court under tribal law with the final arbiter being the Te-Moak Appellate Court.¹⁰

In *Stevens*, Elko advised this Court that it had no jurisdiction because the Te-Moak Council enacted Resolution No. 20-TM-129; Elko should be estopped from seeking the review of its Complaint with a court that months ago it plead had no jurisdiction.

4. THE CIO HAS NO JURISDICTION WHERE THE BIA HAS APPROVED A TRIBAL LAW AND ORDER CODE THAT ESTABLISHES A TRIBAL COURT.

Fatal to the CIO's holding that the CIO has concurrent jurisdiction is the plain language of the CFR. According to 25 CFR §11.104 Part 11 only applies *until* the tribe adopts a legal code and establishes a judicial system.¹¹ The Te-Moak established a judicial system by its Constitution Article 8 and Law and Order Code, Title I, Chap. 3, Sections 1-3-1 through 1-3-5, and 1-3-9, and withdrew from the CIO's jurisdiction when it passed Resolution No. 20-TM-129.

In *State ex rel. Stewart v. District Court of Thirteenth Judicial Dist.*, 609 P.2d 290, (Mont. 1980), the court affirmed that the Department of Interior approval is not required for a tribal court

¹⁰ Article 8, Sec. 3. Jurisdiction . The appellate court of the Tribe shall be the final interpreter of this Constitution and tribal laws.

¹¹ 25 §11.104 When does this part apply?

(a) The regulations in this part continue to apply to each area in Indian Country listed in accordance with §11.100 *until* either:

(1) BIA and the tribe enter into a contract or compact for the tribe to provide judicial services; or

(2) The tribe has put into effect a law-and-order code that establishes a court system and that meets the requirements of paragraph (b) of this section.

(b) When a tribe adopts a legal code and establishes a judicial system, the tribe must notify the Assistant Secretary - Indian Affairs or his or her designee. The law-and-order code must be adopted by the tribe in accordance with its constitution and by-laws or other governing documents.

[73 FR 39859, July 11, 2008, as amended at 85 FR 646, Jan. 7, 2020]

once a tribe has enacted a law and order code to replace the CFR provisions, and held that, “The Crow Tribal Code, being found duly enacted, gives the Crow Tribal Court exclusive jurisdiction over the dissolution of marriage actions between members residing within the exterior boundaries of the reservation.”¹²

In *Colliflower v. Garland*, 342 F.2d 369 (9th Cir. 1965), the court described CFR courts and affirmed they have jurisdiction only until a tribe enacts a formal law and order code.

In *C’Hair v. Dist. Court of the Ninth Judicial Dist.*, 357 P.3d 723 (Wyo. 2015), the court addressed the issue of CIO jurisdiction:

This argument fails because the referenced federal regulation defines the jurisdiction of a Court of Indian Offenses. See 25 C.F.R. §11.100. A Court of Indian Offenses operates only in those areas where a tribal court has not been established. See 25 C.F.R. § 11.102 (“It is the purpose of the regulations in this part to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of State jurisdiction but where tribal courts have not been established to exercise that jurisdiction.”). The Wind River Reservation no longer operates a Court of Indian Offenses and instead operates its own court, the Shoshone and Arapaho Tribal Court. See Shoshone & Arapaho Law & Order Code § 1–3–1 (Nov. 1, 2004) (“There is hereby established a Shoshone and Arapaho Tribal Court to handle all matters of a judicial nature within the jurisdiction of the Shoshone and Arapaho Tribes as provided in this Code.”).

The CIO is to serve the Te-Moak Tribe when it does not have a tribal court. Where the Te-Moak Constitution (which the BIA approved) established a tribal court, the Te-Moak Council

¹² “We note that the District Court in its brief cited 25 C.F.R. §11.1, as requiring approval by the Department of Interior. Such approval is not required once a tribe has enacted a law and order code to replace the C.F.R. provisions. 25 C.F.R. §11.1(d). The Crow Tribe has adopted a comprehensive tribal code and, therefore, is not governed by the provisions of 25 C.F.R. §11. The Solicitor noted concerning secretarial approval, “ . . . However, that Section (25 C.F.R. §11.1 (e)) in our view applies only to modifications of the C.F.R. code (while the Department continues to administer a C.F.R. ‘Court of Indian Offenses’) and does not bar the tribe from exercising its governmental power to adopt a separate code and to establish a tribal court without Secretarial consent.” Memorandum of Solicitor, *supra*, p. 6, footnote 8.

Here, the provisions relied on by the District Court questioning the validity of the tribal code are inapplicable to the Crow Tribe. The Crow Tribal Code, being found duly enacted, gives the Crow Tribal Court exclusive jurisdiction over the dissolution of marriage actions between members residing within the exterior boundaries of the reservation.

enacted a Law and Order Code empowering a tribal court, and enacted a resolution divesting the CIO of jurisdiction and transferring existing cases to the tribal court, the CIO becomes a hollow program without jurisdiction. The CIO is legally gone.

When the CIO serves *as a tribal court* or a tribal court may have concurrent jurisdiction with *the state* in which it is located or the federal court.¹³ *However, there is no law that the CIO can have concurrent jurisdiction with a tribal court.*

25 CFR §11.104 Part 11 does not provide for CFR concurrent jurisdiction with the tribal court and is not conditioned on the CIO or the BIA relinquishing jurisdiction. CIO jurisdiction continued only until enactment of Te-Moak's Law and Order Code and Resolution No 20-TM-129 on November 23, 2020 reestablished its tribal court. The CIO's jurisdiction expired on November 23, 2020.

5. TE-MOAK HAS AUTHORITY TO ESTABLISH A TRIBAL COURT AND WITHDRAW CIO JURISDICTION.

It is fundamental that the Te-Moak Tribe is a sovereign separate from the United States including each of its branches of government including the Department of Interior and its Bureau of Indian Affairs. See *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831). In *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956), 466 F.2d at 243, n. 3, the court held, "it is our view that the Tribal Courts are not arms of the same sovereign as the United States District Court." In *U.S. v. Walking Crow*, 560 F.2d 386 (8th Cir. 1977), the court held, "We hold that a tribal court in

¹³ *State ex rel. West v. West*, , 445 S.E.2d 416 (N.C. App. 1994) (for child custody) (emphasis added) *U.S. v. Long*, 324 F.3d 475 (7th Cir. 2003) (P.L. 280 states), *Hebah v. United States*, 456 F.2d 696, 197 Ct.Cl. 729 (Fed. Cl. 1972) (Certain enumerated offenses), *In re J.W.C.*, 265 P.3d 1265, (Mont. 2011) (ICWA concurrent jurisdiction between state and tribal courts), *State Securities, Inc. v. Anderson*, 506 P.2d 786, (N.M. 1973) (It should thus be evident that federal, state and tribal courts may all have jurisdiction over the same subject matter) or with the federal government as provided in *United States v. Wilson*, 611 F.Supp. 813 (N.D. Cal. 1985) (by federal statute)¹³; *U.S. v. Smith*, 562 F.2d 453 (7th Cir. 1977)(Federal laws have ceded to certain States complete or concurrent criminal jurisdiction over certain Indian country. . . .").

administering its residual jurisdiction is not acting as an adjudicatory arm of the federal government, and that it is not simply an inferior court in the federal judicial system.”

Absent the United States’ explicit exercise of its constitutional plenary power over Indian tribes and nations by legislation, Indian tribes and nations decide their jurisdiction over persons and property within their territories. Absent explicit congressional action, Te-Moak decides if its own tribal court may exercise jurisdiction within its territory. The BIA may assert limited jurisdiction through its Courts of Indian Offense only when a tribe has not exercised its right of sovereignty to determine its exercise of authority and jurisdiction. Under the law, the CIO exist only as an agent of the tribes and nation and at the pleasure of the tribes and nations. That is why tribal courts, *not the CIO*, have concurrent jurisdiction with the states and the federal government and double jeopardy does not apply- they all are separate sovereigns.

Congress stated in the “The Indian Tribal Justice Act,” H.R.1268 — 103rd Congress, that these principles of tribal sovereignty were paramount in the determining jurisdiction over Indian country:

The Congress finds and declares that--

- (1) there is a government-to-government relationship between the United States and each Indian tribe;
- (2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;
- (3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;
- (4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;
- (5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;
- (6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights;

(7) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this Act;

Congress enacted these principles as law in the Indian Tribal Justice Act, Sec 301 which provides that:

Nothing in this Act shall be construed to--

(1) *encroach upon or diminish in any way the inherent sovereign authority of each tribal government to determine the role of the tribal justice system within the tribal government or to enact and enforce tribal laws;*

(2) diminish in any way the authority of tribal governments to appoint personnel;

(3) impair the rights of each tribal government to determine the nature of its own legal system or the appointment of authority within the tribal government;

(Emphasis added.)

The Tribal Justice act is congressional legislation that supersedes the Code of Federal Regulations ("CFR").

Understanding these fundamental principles of tribal sovereignty aligns the case law and the CFR to one conclusion, the CIO has no jurisdiction in this case because Te-Moak Resolution 20-TM-129 divested the CIO of authority and jurisdiction.

Prior to the enactment of Resolution No. 20-TM-129, the CIO asserted haphazardly applied tribal law, federal law, and the CFR. The CIO has violated several CFR and federal law provisions that denied it subject matter jurisdiction.

The Te-Moak Constitution and Law and Order code was enacted by virtue of the tribe's inherent sovereignty and pursuant to the IRA; BIA approval of the Constitution and Law and Order Code and reinforce tribal jurisdiction.

In accordance with the IRA, the Te-Moak Tribe adopted a constitution that was approved by the then Deputy Assistant Secretary of the Interior of Indian Affairs on August 26, 1982. The Te-Moak Law and Order Code ("Code") was adopted in 1987 and approved by the BIA on July

11, 1989. Te-Moak had a functional Tribal Court until early 2017 at which time the CIO asserted jurisdiction.

Te-Moak has the authority to exercise its sovereignty through the Tribal Council and the Chairman. In accordance with the Constitution Art. 4. Executive and Legislative Branch,

Sec. 1. Governing Bodies: The executive and legislative powers of the Tribe shall be vested in a Tribal Council known as the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, and in Band Councils, one Band Council for each constituent Band of the Tribe and identified by the name of the Band.

By Ordinance No. 87-ORD-TM-O2, the Te-Moak Council enacted general provisions asserting jurisdiction over its territory.¹⁴ By Ordinance No. 87-ORD-TM-O3, the Te-Moak Council enacted provisions creating a tribal court.¹⁵ In early 2017, the Te-Moak Court appeared

¹⁴ **TITLE I - GENERAL PROVISIONS**

Chapter 1. Preliminary Provisions

1-1-1 Constitutional Authority

This Law and Order Code is planned to be adopted Chapter at a time, to insure an orderly transition from our present ordinance format to this codified Law and Order Code. This law and Order Code is being adopted pursuant to the authority vested in the Te-Moak Tribal Council under Article 4, Section 3 (n) of the Te-Moak Constitution as amended and approved August 26, 1982.

1-2-1 Jurisdiction

It is hereby declared as a matter of Tribal Policy and legislative determination, that interests and the interest of the Te-Moak Tribe demand that the Tribe provide itself, its members and other person (s) living within the territorial jurisdiction of the Tribe as set forth in Article 2 of the Constitution of the Te-Moak Tribes of Western Shoshone Indians of Nevada with an effective means to redress in both civil (as defined in Section 3-3-4 of the Tribal Court Ordinance) and criminal cases (as defined in Section 3-3-5 of the Te-Moak Tribal Court Ordinance) against Te-Moak Tribal members and Non-Indian members who through either their residence, presence, business, dealings, actions or failures to act or other significant minimum contacts with our Colonies and Reservations and/or its residents commit criminal offenses against the Tribe or Reservation incur civil obligations to persons or entitled to the tribe's protection. This action is deemed necessary as a result of the confusion and conflicts caused by the increased contacts and interaction between which the Tribe has not previously elected to exercise jurisdiction. The jurisdictional provisions of this Law and Order Code, to insure maximum protection for the Tribe, its members' and other residents of the South Fork Reservation, Elko Indian Colony, Battle Mountain Indian Colony and Wells Indian Colony, should be applied equally to all persons, members and non-members alike.

¹⁵ Chapter 3 - Tribal Court, 1-3-1 Creation and Establishment of Court

This Tribal Court is created under the Provisions in Article 8, Section 1 of the Constitution of the Te-Moak Tribe. All proceedings within the purview of the Law and Order Code and any additional ordinances hereafter adopted by the Te-Moak Tribe of Western Shoshone shall be under the jurisdiction of the Tribal Court.

1-3-2 Jurisdiction: The judicial power shall extend to all cases in law or equity arising under the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

1-3-5 Civil

A. Tribal Court shall have jurisdiction, over all civil matters and action as described within the Law and Order Code, as well as civil jurisdiction over all ordinances that may hereafter be passed by the Te-Moak Tribal Council, and

to cease functioning and according to the CIO, the BIA reassumed the Te-Moak's Tribal Judicial System. On November 23, 2020, the Te-Moak Council passed Resolution No.20-TM-129 reinstating its sovereign right to operate its own tribal justice system, established in its Ordinance enacted in 1987. On November 24, 2020, notice of the tribe's reinstatement of its justice system was sent to the Assistant Secretary of the Interior and to the Tribal Justice Support Directorate, as required under 25 C.F.R. §11.104 (b).

In exercising its sovereign rights by Resolution 20-TM-129, the Te-Moak Council reasserted its tribal court jurisdiction as originally enacted in 87-ORD-TM-O3 and approved by the Secretary of Interior, thus divesting the CIO of jurisdiction.

6. THE BIA HAS THE DUTY TO PROMOTE AND PROTECT THE TE-MOAK'S SOVEREIGN RIGHT TO ASSERT TRIBAL COURT JURISDICTION.

In *Talton v. Mayes* 163 US 376, 380, (1893), the U.S. Supreme Court acknowledged that Indian tribes and nations are separate sovereigns and the interpretation of tribal law belongs to the tribe and not the federal government.¹⁶ The U.S. Supreme Court affirmed the principle of internal self-governance in *United States v. Kagama*, 118 U. S. 375, 381 (1886) by finding:

They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations not as states, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the

amendments to the Code that may hereafter be adopted, and any person may file a civil cause of action in the Te-Moak Tribal Court wherein the cause of action arose within the exterior boundaries of the Te-Moak Tribe, and the court shall have jurisdiction thereof.

B. The civil jurisdiction of this court is not limited by the amount or value in controversy, including interest.

1-3-9 Tribal Law and Order Code: The Te-Moak Tribal Code shall apply the provision of this Court and any additional ordinances hereafter adopted by the Tribe.

¹⁶ "The question whether a statute of the Cherokee Nation which was not repugnant to the Constitution of the United States or in conflict with any treaty or law of the United States had been repealed by another statute of that Nation, and the determination of what was the existing law of the Cherokee Nation as to the Constitution of the grand jury, was solely a matter within the jurisdiction of the courts of that Nation, and the decision of such a question, in itself, necessarily involves no infraction of the Constitution of the United States. Such has been the decision of this Court with reference to similar contentions arising upon an indictment and conviction in a state court." 163 U.S. 385

power of regulating their internal and social relations, and thus far not brought under the laws of the Union, or of the state within whose limits they resided.

It goes without saying the Department of Interior and its Bureau of Indian Affairs, including its CIO, must defer to the decisions of tribal courts and governments in interpreting the tribe's own laws.

In *Alexander v. Salazar*, 739 F.Supp.2d 1333, (E.D. Okla. 2010), a case involving child custody was transferred by tribal law from the CFR court to a newly created tribal court, the federal District Court rejected the proposition that the CRF court's jurisdiction was determined by federal law. The Court found:

The issue is whether the implementation of the new tribal court system was accomplished consistent with tribal legislation and tribal Constitutional provisions. These are issues "arising under" tribal law, not federal law.

...

While the record is silent as to any non-Indian involvement in this action, the underlying dispute clearly involves a matter of internal tribal affairs in the form of a claim that the Chief of the Choctaw Nation usurped legislative duties by issuing an Executive Order declaring that the C.F.R. Court of Indian Appeals retained jurisdiction over pending appeals. *A clearer case of an internal tribal matter would be hard to fathom.* (Emphasis added.)

Federal law requires the CIO to defer to tribal law and, in this case, the Te-Moak Council withdrew jurisdiction from the CIO by Resolution Number 20-TM-129.

In *Santa Clara Pueblo*, 436 U.S. 49, the U.S. Supreme Court affirmed the tribe's right of internal self-government by finding:

Indian tribes are "distinct, independent political communities, retaining their original natural rights" in matters of local self-government. *Worcester v. Georgia*, 6 Pet. 515, 559, 8 L.Ed. 483 (1832); see *United States v. Mazurie*, 419 U.S. 544, 557, 95 S.Ct. 710, 717, 42 L.Ed.2d 706 (1975); F. Cohen, Handbook of Federal Indian Law 122-123 (1945). Although no longer "possessed of the full attributes of sovereignty," they remain a "separate people, with the power of regulating their internal and social relations." *United States v. Kagama*, 118 U.S. 375, 381-382, 6 S.Ct. 1109, 1112-1113, 30 L.Ed. 228 (1886). See *United States v. Wheeler*, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978). They have power to make their

own substantive law in internal matters, see *Roff v. Burney*, 168 U.S. 218, 18 S.Ct. 60, 42 L.Ed. 442 (1897) (membership)s *Jones v. Meehan*, 175 U.S. 1, 29, 20 S.Ct. 1, 12, 44 L.Ed. 49 (1899) (inheritance rules); *United States v. Quiver*, 241 U.S. 602, 36 S.Ct. 699, 60 L.Ed. 1176 (1916) (domestic relations), and to enforce that law in their own forums, see e. g., *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959).

Therefore, the CIO must yield to tribal law for a grant of jurisdiction to it. Quite simply, the CIO may not exercise concurrent jurisdiction with the tribal court because the CIO has none.

There is nothing in the CFR that remotely supports the CIO finding that the tribe cannot divest it of jurisdiction or that it has concurrent jurisdiction with the tribal court.

C. THE DEFENDANTS/APPELLANTS IN THEIR INDIVIDUAL CAPACITY HAVE NO AUTHORITY TO COMPLY WITH THE CIO'S ORDERS.

Judge Harlan erred by entering orders to compel individuals reapportion Council seats. This case should be dismissed for failure to state a cause of action that a remedy can be ordered pursuant to F.R.C.P. 12 (b)(6). Plaintiffs sued Defendants/Appellants in their individual capacity. In their individual capacity, they can perform no official action or duty including reapportioning council seats. As plead, the Complaint would have the same impact if it named eight random people off the street and asked this Court to order them reappoint council seats. Only the government can take legislative action- not individuals.

In *Lewis v. Clarke*, 137 S. Ct. 1285, (2017), the U.S. Supreme Court described the difference between official and individual capacity suits:

The distinction between individual- and official-capacity suits is paramount here. In an official-capacity claim, the relief sought is only nominally against the official and in fact is against the official's office and thus the sovereign itself. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) ; *Dugan v. Rank*, 372 U.S. 609, 611, 620–622, 83 S.Ct. 999, 10 L.Ed.2d 15 (1963). This is why, when officials sued in their official capacities leave office, their successors automatically assume their role in the litigation. *Hafer*, 502 U.S., at 25, 112 S.Ct. 358. The real party in interest is the government entity, not the named official. See *Edelman v. Jordan*, 415 U.S. 651, 663–665, 94 S.Ct. 1347, 39

L.Ed.2d 662 (1974). “Personal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law.” *Hafer*, 502 U.S., at 25, 112 S.Ct. 358 (emphasis added); see also *id.*, at 27–31, 112 S.Ct. 358 (discharged employees entitled to bring personal damages action against state auditor general); cf. *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). “[O]fficers sued in their personal capacity come to court as individuals,” *Hafer*, 502 U.S., at 27, 112 S.Ct. 358 and the real party in interest is the individual, not the sovereign.

In this case, Plaintiffs/Appellees *explicitly* named and plead Defendants/Appellants were sued in their individual capacities. See Complaint paragraphs 7 and 8. As such, this case should be dismissed because in their individual capacities the Defendants/Appellants cannot perform official functions of the Te-Moak Tribe, therefore ordering them to reapportion council seats is a nullity.

There is a good reason that the Plaintiffs/Appellees chose not to sue the Defendants/Appellants in their official capacity because that would be a suit against the Te-Moak Tribe who is protected from suit by sovereign immunity.

III. CONCLUSION

Harland’s “Order Granting Requested Relief Upon Default” was issued without service of the Complaint on the Defendants/Appellants and before the time expired for Defendants/Appellants to answer the Complaint.. Her subsequent *Sua Sponte* Order of Modification and Clarification is also legally infirm because the CIO had no subject matter jurisdiction. Harland had no jurisdiction because: the CIO is prohibited from hearing suit against the tribe or involves an internal tribal government dispute; there was no waiver of sovereign immunity by Te-Moak; the Te-Moak tribe withdrew from the CIO’s jurisdiction; the CFR does not apply to the Te-Moak Tribe; and the BIA had approved a tribal law and order code that established a tribal court preempting the CIO.

The CIO had no subject matter jurisdiction over this case and it must be dismissed. Further, this case must be dismissed because the CIO cannot order the Defendants/Appellants sued in their individual capacities to perform official duties.

Submitted September 15, 2021.

/ss/
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Te-Moak Tribal Council

Certificate of Service

I hereby certify that a copy of the foregoing Opening Brief in Support of Appeal was emailed or mail through the U.S. Postal Service to the following persons on September 15, 2021.

/ss/
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Schurz, Nevada 89427
wwilliamslaw@gmail.com
Attorney for Elko Band

EXHIBIT 4

**IN THE COURT OF INDIAN OFFENSES
FOR THE WESTERN REGION**

ELKO BAND, a constituent band of the)
Te-Moak Tribe, ELKO BAND COUNCIL,)
the governing body of the Elko Band,)
DAVIS GONZALES, Chairman of the Elko)
Band,)

Plaintiff,)

Case No.: CIV-21-WR07

vs)

JOSEPH HOLLEY, Tribal Chairman;)
ALICE TYBO, Tribal Council member,)
DUANE GARCIA, SR., Tribal Council)
Member; ANDREA WOODS, Tribal)
Council Member; JULIA OPPENHEIN,)
Tribal Council Member; PAULA GARCIA,)
Tribal Council Member; DOES I-X, and)
ROE ENTITIES I-X,)

Defendants.)

ORDER GRANTING REQUESTED RELIEF UPON DEFAULT

NOW on this 15th day of September, 2021, this matter comes before the undersigned Chief Magistrate upon Te-Moak Tribal Council's Motion to Stay the Court of Indian Offenses Orders of August 24, 2021 and September 9, 2021. Being advised in the premises, and having reviewed applicable law, the Court FINDS and ORDERS as follows:

Pursuant to the Te-Moak Code of laws, Ordinance 87-ORD-TM-03, Section 1-3-27, this Court does hereby STAY its previous orders pending the outcome of an appeal taken with the Court of Indian Appeals.

IT IS SO ORDERED.


MARSHA HARLAN, CHIEF MAGISTRATE

**IN THE COURT OF INDIAN OFFENSES
FOR THE WESTERN REGION**

ELKO BAND, a constituent band of the)
Te-Moak Tribe, ELKO BAND COUNCIL,)
the governing body of the Elko Band,)
DAVIS GONZALES, Chairman of the Elko)
Band,)

Plaintiff,)

Case No.: CIV-21-WR07

vs)

JOSEPH HOLLEY, Tribal Chairman;)
ALICE TYBO, Tribal Council member,)
DUANE GARCIA, SR., Tribal Council)
Member; ANDREA WOODS, Tribal)
Council Member; JULIA OPPENHEIN,)
Tribal Council Member; PAULA GARCIA,)
Tribal Council Member; DOES I-X, and)
ROE ENTITIES I-X,)
Defendants.)

ORDER GRANTING REQUESTED RELIEF UPON DEFAULT

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Pursuant to the Te-Moak Code of laws, Ordinance 87-ORD-TM-03, Section 1-3-27, this Court does hereby STAY its previous orders pending the outcome of an appeal taken with the Court of Indian Appeals.

IT IS SO ORDERED.



MARSHA HARLAN, CHIEF MAGISTRATE

EXHIBIT 5

TE-MOAK TRIBE OF WESTERN SHOSHONE
ELKO ARTS & CRAFTS BUILDING
JULY 15, 1987

TYPE OF MEETING: Regular
QUORUM PRESENT: Yes
PRESIDING OFFICER: Clarence Andreozzi, Vice-Chairman
MEMBERS PRESENT: LaVonna Johnson, Karen McDade, Victoria Reynolds,
Nevada Penoli.
MEMBERS ABSENT: Felix Ike, Gardenia Yowell, Leta Jim, Paula Brady.
TRIBAL STAFF: Davis Gonzales, Connie Mendez, Marvin McDade, Rick
Cook, Thomas Ghostdog, Bernice Lalo, Diana Ioretz,
Carolyn Nahnacassia,
BIA OFFICIAL: None
OTHERS PRESENT: Wesley Hall, Joe Prior, Toni Villalobos.

CALL TO ORDER: Roll call was taken at 6:45 P.M. and a Quorum was present to conduct business.

ITEM # 1. READING OF MINUTES: June 12, 1987, was read by the Recording Secretary, Davis Gonzales. Clarence Andreozzi asked if there were any corrections on the minutes. Correction on Page 4 on Scholarship should state that to be eligible for services they should be an enrolled member and not have certain blood quantum. Clarence Andreozzi asked if there any more corrections, and there being no more corrections, Clarence Andreozzi asked for a motion to adopt the minutes. LaVonna Johnson made a motion to adopt the minutes. Nevada Penoli seconded the motion.
VOTE: 4 FOR; 0 AGAINST; 0 ABSTENTIONS.

ITEM # 2. CLOSED PORTION OF THE MINUTES: Clarence Andreozzi asked if there were any corrections to the closed minutes of June 12, 1987. Addition to Item 3 should read as follows: that Dale Malotte's increase would be the balance of what the contract is allowing. Corrections were then made. Clarence Andreozzi then asked for a motion to adopt the closed minutes. Victoria Reynolds made a motion to adopt the closed minutes. LaVonna Johnson seconded the motion.
VOTE: 4 FOR; 0 AGAINST; 0 ABSTENTIONS.

UNFINISHED BUSINESS

Item # 1. Tribal Codes Ordinance: Marvin McDade reported that the Tribal Codes Ordinance is past the 45-day review, and it only needs a final approval. He also said that we had a consolidated meeting on June 30, 1987, on the various Ordinances. Changes were made on each of the Ordinances at that time. Clarence Andreozzi asked if there were any questions on the Tribal Codes Ordinance. Since there were no further questions, Clarence Andreozzi asked for a motion to accept the Tribal Codes Ordinance, 87-ORD-TM-02. Karen McDade made a motion to accept the Tribal Code Ordinance. LaVonna Johnson seconded the motion.
VOTE: 4 FOR; 0 AGAINST; 0 ABSTENTION.

Item # 2. Tribal Court Ordinance: Marvin McDade stated that the 45-day review period is in effect for both the Tribal Court Ordinance and the Tribal Codes Ordinance. There were questions regarding the qualifications of the judges and the Ordinance was changed to comply the Council's requests.

MINUTES: July 15, 1987

Elko Band Council wanted this Ordinance to quote part of the Te-Moak Constitution, Article 8, Section 4(b), which was done. Clarence Andreozzi suggested that a "Knowledge of Indian Law" on page 4 be included. Clarence Andreozzi asked if there were any questions on the Tribal Court Ordinance. Since there were no further questions, a motion was made by Nevada Penoli to accept the Tribal Court Ordinance No. 87-ORD-TM-03. LaVonna Johnson seconded the motion.
VOTE: 4 FOR; 0 AGAINST; 0 ABSTENTION.

Item # 3. STANDARD LAND ASSIGNMENT ORDINANCE: Marvin McDade said that the Standard Land Assignment Ordinance is in the same position as the Tribal Court Ordinance and Tribal Code Ordinance, in that, it is past the 45-day review period, reaching approximately 60 days, and it has been presented to the Te-Moak Council three times. Marvin McDade read the part which had been changed "only one (1) Standard Land Assignment of sufficient agricultural land shall be held by a member of the Te-Moak Tribe of Western Shoshone Indians of Nevada." He went on to explain that this ordinance was presented to the South Fork review committee and they wanted to insert the word "sufficient." Clarence Andreozzi asked if there were any questions on the Standard Land Assignment. There being no questions, Karen McDade made a motion to adopt the Standard Land Assignment Ordinance No. 87-ORD-TM-04. LaVonna Johnson seconded the motion.

VOTE: 4 FOR; 0 AGAINST; 0 ABSTENTION.

Item # 4. ELECTION ORDINANCE: Marvin McDade introduced the Election Ordinance to the Council to start the 45-day review. Marvin said that he will be sending copies to the Band Councils. The Bands should thoroughly review this proposed Ordinance and ask questions when presented to them.

Item # 5. DOG ORDINANCE: Marvin McDade explained that a consolidated meeting which was held on June 30th, at which time this Ordinance was presented to the Band Council members, but he never received any comments from the Wells Band Council members on the Dog Ordinance. He went on to explain that all authority has been taken away from the Te-Moak Administration in the Ordinance and given to the Band Councils, and the only thing Te-Moak has to do is to incorporate it into the Tribal Court System. Clarence Andreozzi asked if the court system is going to hear these cases or will the court be asking for funds from Washington to supply the court system and he asked also if the fines have to go back into the court system to supplement their needs. Marvin McDade explained that the total support of the Tribal Court is from fine monies, and we need to research what's happening to the court fines versus BIA funds. Clarence Andreozzi asked if there were any further questions on the Dog Ordinance. Davis Gonzales had a question in reference to the way the codes were arranged, in that 9-1-3 preceded 9-1-7-, and #2 appeared by itself, etc. Marvin McDade explained that it really doesn't make any difference. After some discussion, Clarence Andreozzi said that Council will table the Dog Ordinance until next meeting. LaVonna Johnson made a motion to table the Dog Ordinance. Nevada Penoli seconded the motion.

VOTE: 4 FOR; 0 AGAINST; 0 ABSTENTIONS.

MINUTES: July 15, 1987

Item # 6. DUCK VALLEY SHOSHONES: Davis Gonzales read the letter from Mr. Steve Tibbetts, Superintendent of Eastern Nevada Agency, dated July 6, 1987, in reference to the Duck Valley Resolution and the Administrator's letter. Corban Harney, the spokesman for the Duck Valley group said they were wondering what steps to take next. He said that it was suggested that the Duck Valley group pursue this matter to the Tribal Court, but they thought they go to the next step, which is the Area Office, and so they had a resolution drafted.

Davis Gonzales read the Duck Valley Shoshone's Resolution.

Davis Gonzales explained that James Stevens from the Area Office in Phoenix did meet with the Duck Valley representatives on June 25, 1987, when he met with the Eastern Nevada Tribes of Nevada at the Holiday Inn. Davis went on to say that the budget proposal was submitted to Mr. Steve Tibbetts, Superintendent of Eastern Nevada Agency, but that Mr. Steve Tibbetts had kicked it back to us and provided no technical assistance. Clarence Andreozzi asked, if Mr. Steve Tibbetts provided technical assistance to the Duck Valley group. Corbin Harney replied, "I really don't think so." Corbin Harney went on to say that since the Te-Moak Tribal Council is involved in negotiations with the bureau on behalf of Duck Valley, that he is in favor of the Te-Moak Tribal Council...to "really push it," and that he is grateful that the Te-Moak Council is helping the Duck Valley group in this endeavor.

After much discussion, Clarence Andreozzi asked if there were any more questions on this Resolution. Since there were no other questions, Victoria Reynolds made a motion to adopt the Resolution 87-TM-27 requesting the Phoenix Area Office of providing technical assistance to Duck Valley Shoshone's. Nevada Penoli seconded the motion.

VOTE: 4 FOR; 0 AGAINST; 0 ABSTENTIONS.

REPORTS

ADMINISTRATOR: Davis Gonzales reported that he still does not have the police vehicles evaluated or appraised yet.

Davis Gonzales reported on the Health Budget for FY'88. After much discussion on this budget, Clarence Andreozzi said that we enact a Resolution stating that we don't like having this health proposal in the amount of \$155,000.00, more specifically, having Elko Band contracting on their own, because it hurts the Te-Moak people as a whole. The Elko Band, should have their proposal okayed by the Te-Moak Council, which is the main governing body for all bands. Davis Gonzales said that Phoenix Area Office is sending the letter back to us, still not honoring the \$221,000.00 budget. He went on to say that the budget of \$155,000, 10,000.00 is more than what is allotted to Te-Moak (145,000.00), which we feel can be justified and the Phoenix Area Alcohol & Drug Dept. agreed to this.

Davis Gonzales said the total FY'88 budget right now including Elko is \$221,000. Davis asked the Council members if he can go ahead and submit the \$155,000, but still opposing the budget cut. Karen McDade added that she is opposing the proposed contract of \$155,000, and that the Band councils have no authority to contract on their own, and that the Te-Moak Tribal Council, in the Preamble of the Constitution, states that the Tribal Council is to promote and protect the health, peace, morals, education, safety and welfare of the Tribe, its members and all other persons within its jurisdiction, and govern the conduct of Tribal members, etc., and that the Te-Moak Council has the power to contract with Federal Governments, whereas the band councils have no power to contract with the Federal Government.

Clarence Andreozzi said that the Te-Moak Council is still the contracting agent, and we, the Te-Moak Council, should follow the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Clarence Andreozzi stated that, "We wish to have a Health Program for FY'88 in the amount of \$221,000.00 and the Te-Moak Council is the governing body, suppose to be the one contracting, and if the bands need to sub-contract from Te-Moak, and that should be stated in the their resolution, providing that they are capable of contracting.

Davis Gonzales informed the council that the BIA is using the population percentage for allocating funds for FY'88, which is not the BIA's decision to make. He said that each band should receive the same amount of monies to be equal and fair, furthermore, the superintendent did not consult with the Tribes of his intentions.

It was the consensus of the Council Members to have Davis re-submit the \$155,000.00 proposal and objecting for the record that the Elko Band contracting on their own.

Karen McDade made a motion to adopt Resolution No. 87-TM-28, informing the BIA/IHS, the Constitutional Powers of the Te-Moak Tribal Council, in contracting with Federal Governments and that the Constituent Band don't have the authority to contract with Federal Governments. Nevada Penoli seconded the motion.

VOTE: 4 for; 0 AGAINST, and 0 ABSTENTIONS.

Davis reported on the Law Enforcement proposal for FY'88, that he had re-submitted for \$60,000.00 for South Fork and Battle Mountain which was rejected and now sent back through the Agency to the Phoenix Area Office.

Davis Gonzales went on to say that according to Steve Tibbetts agency reallocation, all Te-Moak Contracts are being reduced with the exception of Social Services, which is receiving \$10,000.00 more and the AVT Program which is receiving \$20,000.00 more.

Davis read a resolution which had been drafted as a result of budget cuts. Victoria Reynolds made a motion to adopt the Resolution No. 87-TM-29, and Nevada Penoli seconded the motion.

VOTE: 4 FOR; 0 AGAINST and 0 ABSTENTIONS.

PAGE 5

MINUTES: July 15, 1987

Nevada Penoli left the meeting at 10:10 p.m.

FINANCE DIRECTOR: Rick Cook handed out the monthly statements for all the programs and asked if he should do this on a quarterly basis or on a monthly basis. He stated the only problem was the expense of duplication. After discussing the problem, Clarence Andreozzi stated that we needed a motion to have the program totals monthly and a complete program breakdown on a quarterly basis. Victoria made the motion and LaVonna seconded it.

VOTE: 3 FOR, 0 AGAINST, 0 ABSTENTIONS.

NEW BUSINESS

ITEM # 1: FOSTER HOME RECRUITMENT PROGRAM POSITION: Diana Loretz, Social Services Director reported that Thomas Ghostdog has been doing a good job, and asked the Council to accept Thomas as a permanent employee. After much discussion it was the consensus of the Council members to extend the appointment for the position of the Foster Home Recruitment Program Coordinator for a period of four (4) months.

ITEM # 2: SOCIAL SERVICES DIRECTOR'S REPORT: Diana Loretz said that the new figures that had come down from the BIA showed an increase for Social Services Program in the amount of \$10,000.00, and that apparently most of the other contracts showed a reduction. She said the re-contract proposal does not include Elko, and she wanted to know if she should prepare a budget to include the whole Te-Moak area. It was the consensus of the Council that Diana Loretz have an overall budget ready which includes Elko.

Diana said that she received a new budget in the amount of \$74,780.00 from Administration, and she was requested to revise a budget for that figure. She said that Battle Mountain Band Council, South Fork Band Council, Wells Band Council, and Goshute Business Council have seen these figures. She said that with the \$10,000.00 increase, she will change the part-time secretarial position to a full-time position and also increase the salaries of each position up five (5) percent, which includes medical benefits, the tax line items and also will be used for supplies, etc., but she reduced the assistance direct dollars for client services, as the program has been in excess of general assistance monies over the past years.

Clarence Andreozzi asked if there was any questions. Diana Loretz said she had mentioned before that she didn't need a Resolution, because of the 3 year contract, but would like a letter of acknowledgement from the Te-Moak Council, which would have the Chairperson's signature on it. Karen McDade made a motion for a cover letter to be prepared for approval, and LaVonna Johnson seconded the motion.

VOTE: 3 FOR; 0 AGAINST and 0 ABSTENTIONS.

PAGE 6

MINUTES: July 15, 1987

ITEM # 3 INDIRECT COST PROPOSAL: Rick Cook presented the Indirect budget proposal to the Council. He said FY'87's budget is for \$80,000.00 and FY'88's budget is \$85,000.00. A new part-time position for a Clerk-Typist will be included in the new budget proposal. He said that the Clerk-Typist will not be eligible for health insurance. After much discussion, Karen McDade made a motion to accept the Indirect Budget. Victoria Reynolds seconded the motion. VOTE: 3 FOR; 0 AGAINST and 0 ABSTENTIONS.

ITEM # 4: FOSTER HOMES LICENSING STANDARD: Thomas Ghostdog said that he would like the Te-Moak Council to approve a Resolution on the Foster Home Licensing Standard, which all the bands have already approved. Thomas then read the resolution.

Clarence Andreozzi asked if there were any questions. There being no questions, Clarence asked for a motion to adopt the Resolution 87-TM-30. Victoria Reynolds made a motion to adopt the Resolution 87-TM-30. LaVonna Johnson seconded the motion. VOTE: 3 FOR; 0 AGAINST and 0 ABSTENTIONS.

ITEM # 5: TOBACCO ORDINANCE: Connie Mendez presented the amendment to the Tobacco Ordinance, more specifically to Paragraph F. Exercise Tax Imposed, paragraph No. 1, for the Band Council's review for the 45 day review.

ITEM # 6: ADJOURNMENT: LaVonna made a motion to adjourn the meeting at 10:30 p.m., and Karen McDade seconded the motion. VOTE: 3 FOR; 0 AGAINST and 0 ABSTENTIONS.

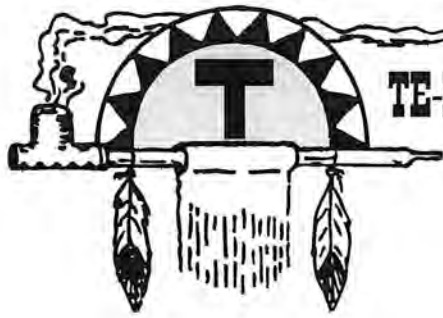
The meeting adjourned at 10:30 p.m.

Respectfully submitted,



Davis Gonzales
Recording Secretary

EXHIBIT 6



TE-MOAK TRIBE OF WESTERN SHOSHONE

825 Railroad Street • Elko, Nevada 89801

March 18, 2021

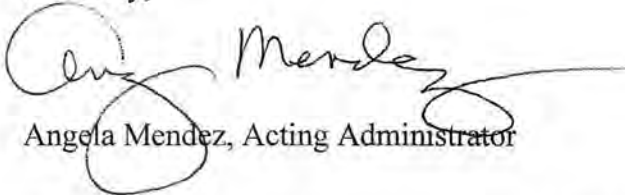
Bureau of Indian Affairs
Western Regional Office
Sophia Torres, Court Administrator/Acting Tribal Operations
2600 N Central Avenue
Phoenix, AZ 85004

Ms. Torres:

Per your request enclosed is a copy of the Te-Moak Tribe's Resolution No. 21-TM-107, enacted and approved on August 17, 2021. Tribal Resolution No. 21-TM-107 adopts the use of the 25 CFR Code of Federal Regulations to be utilized in the interim, until the Te-Moak Tribe Law and Order Code meets the necessary standards to arbitrate cases in the Tribal Court.

If you should need any additional information, please feel free to contact me at (208)406-2838
Or by email at angelamendez@yahoo.com.

Sincerely,



Angela Mendez, Acting Administrator

cc: Joel Chino, Special Agent in Charge OJS LES
Joseph McDade, Superintendent ENA BIA
BIA Eastern NV CFR Courts
Tammy Carrera, Court Clerk
Anne Laughlin, Prosecutor
Wendall Hayes, Chief Judge

EXHIBIT 7



TE-MOAK TRIBE OF WESTERN SHOSHONE

**RESOLUTION OF THE GOVERNING BOARD
OF THE
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA**

RESOLUTION NO. 21-TM-134

Approval of Court Manual

THE TE-MOAK TRIBAL COUNCIL ON BEHALF OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA AGREES, BY UNANIMOUS VOTE, TO APPROVE THE TE-MOAK TRIBAL COURT 2021 MANUAL AND THE AMENDED TE-MOAK TRIBAL COURT FILING GUIDE ENTITLED, "THE WHO, WHAT, WHEN, WHERE & WHY TO FILING A CIVIL CASE IN THE TE-MOAK TRIBAL COURT," AND TO SUBMIT SAID MANUAL AND GUIDE TO SOPHIA TORRES, ACTING TRIBAL OPERATIONS OFFICER, DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS IN PHOENIX ARIZONA AND TO CHRISTOPHER RUEDAS AT THE OFFICE OF THE SOLICITOR, INTERMOUNTAIN REGION, SALT LAKE CITY, UTAH.

BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA THAT:

WHEREAS, this organization is an Indian Organization as defined under the Indian Reorganization Act of June 18, 1934, 25 U.S.C. Section 461 et seq., (as amended) to exercise certain rights of Home Rule and to be responsible for its Tribal members; and

WHEREAS, the Te-Moak Tribe of Western Shoshone Indians' Tribal Council ("Council") is composed of Constituent Bands known individually as the Battle Mountain Band Council, Elko Band Council, South Fork Band Council, and the Wells Band Council, (collectively "Bands"); and

WHEREAS, the Te-Moak Tribe of Western Shoshone Indians of Nevada retains the inherent right to govern itself and exercise sovereign authority over its lands and its people, as established by the Constitution of the United States, Article I, Section 2,

Resolution: 21-TM-134

Approved: December 9, 2021

Clause 3: Article I, Section 8; and by the Fourteenth Amendment, Section 2; and in United States v. Mazurie, 419 U.S. 544, 557 (1975) ruling that “Indian Tribes are unique aggregations possessing attributes of sovereignty over both their members and over their territory...[as] ‘separate people’ possessing ‘the power of regulating their internal and social relations...’” (citing and quoting Worcester v. Georgia 31 U.S. 557 (1832); United States v. Kagama 118 U.S. 375, 381-82 (1886), and McClanahan v. Arizona State Tax Comm’n 411 U.S. 164, 173 (1973); the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada and 25 U.S.C. Section 1301 et seq., (affirming the Constitutional Rights of Native Americans and the recognition by the United States of America in Native American Tribal “Powers of Self-Government” to include “all governmental powers possessed by an Indian Tribe including Executive, Legislative & Judicial Rights, and all offices, bodies and tribunals by and through which these Rights are executed, including but not limited to Courts of Indian Offenses,’ and “Indian Courts” meaning any Indian Tribal and/or Court of Indian Offenses”); and

WHEREAS, pursuant to the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada, Article 4, Section 3(j), (k), and (n) the Tribal Council retains Sovereign Authority to promote and protect the health, safety and welfare of the Te-Moak Tribe, its members and all persons within the Tribe’s jurisdiction and the Tribal Council retains the authority to promulgate Resolutions that are “necessary and proper for carrying into effect” the Council’s authority to “regulate all administrative, executive, judicial and legislative bodies of the Te-Moak Tribe, Tribal Agencies, Officers and Organizations;” and

WHEREAS, the Preamble of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada sets forth the purpose behind the Constitution as necessary “to improve the governing structure...administer justice... and otherwise govern the affairs of this Tribe:’ and

WHEREAS, the Te-Moak Tribal Council held a regularly scheduled Te-Moak Council meeting where a quorum was present; and

WHEREAS, a motion was properly made, and seconded to approve the Te-Moak Tribal Court 2021 Manual and the amended Te-Moak Tribal Court Filing Guide entitled, “The Who, What, When, Where & Why To Filing A Civil Case In The Te-Moak Tribal Court,” to be submitted to Sophia Torres, Acting Tribal Operations Officer, Department of the Interior, Bureau of Indian Affairs, in Phoenix Arizona and Christopher Ruedas at the Office of the Solicitor, Intermountain Region in Salt Lake City, Utah.

WHEREAS, after discussion of the motion, the Te-Moak Tribal Council voted on the motion and by a majority vote of the Council, passed said motion; and

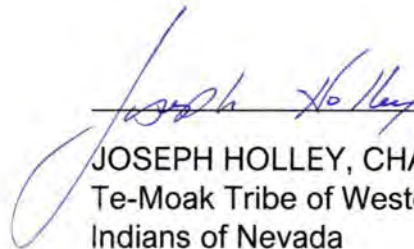
NOW THEREFORE BE IT RESOLVED, the Te-Moak Tribal Council on behalf of the Te-Moak Tribe of Western Shoshone Indians of Nevada hereby approves the Te-Moak Tribal Court 2021 Manual and the amended Te-Moak Tribal Court Filing Guide entitled, "The Who, What, When Where & Why To Filing a Civil Case In The Te-Moak Tribal Court," and to submit said Manual and Guide to Sophia Torres, Acting Tribal Operations Officer, Department of the Interior, Bureau of Indian Affairs, in Phoenix, Arizona and Christopher Ruedas at the Office of the Solicitor, Intermountain Region in Salt Lake City, Utah.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, Joseph Holley, the undersigned, as Chairman of the Te-Moak Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, do hereby certify that the Te-Moak Tribal Council is composed of nine (9) members of whom 5 were present at the Tribal Council meeting which constituted a quorum held on September 9, 2021, and the foregoing Resolution was adopted at such Meeting by a vote of 4 In Favor; 0 Against; 0 Abstaining, pursuant to the Authority of Article 4, Section 3 of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

INVALID IF NO SEAL APPEARS BELOW




JOSEPH HOLLEY, CHAIRMAN
Te-Moak Tribe of Western Shoshone
Indians of Nevada

ATTEST:



Alfreda Walker, Acting Recording
Secretary

EXHIBIT 8

**TE-MOAK TRIBE OF
WESTERN SHOSHONE
INDIANS OF NEVADA**

**TE-MOAK TRIBAL COURT
MANUAL**

2021

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Introduction

The will of the people of the Te-Moak Tribe of Western Shoshone Indians of Nevada ("Tribe") is expressed through its elected officials collectively known as the Te-Moak Tribal Council ("Council"). This Council prides itself on equal representation from each of its four (4) Bands with two (2) representatives from Wells Band, two (2) from South Fork Band, two (2) from Battle Mountain Band, and two (2) representatives from Elko Band. The Te-Moak Council is the highest authority within the Tribe. It has authority over all matters that require use of the Te-Moak Federal recognition. The Council meets once every month for Regular Meetings and Special Meetings can be called by the Te-Moak Chairperson if needed. All Council members, in good standing, may vote on issues affecting the Te-Moak Tribe. Every three years during the second week in October, the individual Bands elect their Band Officials, including their respective Chairperson, Vice Chairperson, Secretary and Treasurer. After the results of these respective elections become certified, each Band appoints two (2) members from their respective Councils to serve on the Te-Moak Council. The members appointed from each Band then nominate and vote to elect a Te-Moak Council Chairperson, Vice Chairperson, Secretary and Treasurer. These Officials serve a term that runs concurrent with their term as Band Officials. The Te-Moak Council Officials are responsible for the day-to-day operations and are the external representatives of the Tribe.

The Tribe has given the Te-Moak Council the supreme authority to make decisions on its behalf. The Council is responsible for passing resolutions, ordinances, setting policy and making decisions during meetings. On November 23, 2020, the Te-Moak Council passed Resolution 20-TM-129 electing to exercise and reassert the existing jurisdiction, authority, and sovereignty to operate its own Tribal Court and to withdraw the Te-Moak Tribe from the jurisdiction of the Court of Indian Offenses ("CIO"). The Te-Moak Tribe established their own judicial system by virtue of the Tribe's inherent authority and pursuant to the Indian Reorganization Act of June 18, 1934, Chapter 576, 48, Stat. 948 ("IRA"), Article 8 of the Te-Moak Constitution and through their Te-Moak Law & Order Code, Title I, Chapter 3, Sections 1-3-1 through 1-3-5, and 1-3-9. These legal authorities are controlling as to Tribal jurisdiction and allows them to withdraw from the CIO's jurisdiction with the passage of Resolution 20-TM-129. In accordance with the Indian Reorganization Act of 1934, the Te-Moak Constitution was approved by the Deputy Assistant Secretary of the Interior of Indian affairs on August 26, 1982 and their Law and Order Code was adopted by the Tribe in 1987, and approved by the Bureau of Indian Affairs on July 11, 1989.

The Te-Moak Tribal Court is a source of great pride for the Shoshone people and a symbol of their inherent political sovereignty. The Tribal Court exists to promulgate and enforce Te-Moak laws and ordinances. It provides for the maintenance of law and order and for the administration of justice within the Tribe's jurisdiction and on Tribal lands. The Court administers and protects Tribal lands and engages in activities that will promote the health, peace, morals, education, and welfare of the Tribe and its Tribal Members for Seven Generations to come.

Updated versions of the Tribal Court Manual shall be released to Tribal members each year. **This 2021 version incorporates amendments and revisions to the Tribe's Law & Order Code as of August 20, 2021.** Individuals should consult the Te-Moak Law-and-Order Code Supplement concerning Ordinances and Resolutions passed after that date.

CHAPTER 1: Title, Purpose and Definitions

1-A Title & Citation

- (a) **Title**. The Sections contained herein are organized into a comprehensive set of Te-Moak Tribal Court rules and policies and shall be known as the "Te-Moak Tribal Court Manual."
- (b) **Organization**. The Te-Moak Tribal Court Manual shall be organized in groups of rules, policies, and guidelines according to subject matter. Each subject matter section shall be designated as a Chapter and identified by an alphanumeric designation and caption (e.g., Chapter 1, Subsection 1-A & Title.)
- (c) **Citation**. Citation to this Manual shall be by letters "TMM" followed by the appropriate Chapter, Section and Subsection in parenthesis (e.g., "TMM Chapter 1, 1-A" or "TMM 1-A(a)").

1-B Purpose

- (a) It is the purpose of this Te-Moak Tribal Court Manual is to serve as a compass to guide users in the successful utilization of the Te-Moak Tribal Court system.
- (b) This Te-Moak Tribal Manual shall supersede all governing documents inconsistent herewith and applicable prior to the approval of this Manual.
- (c) All Te-Moak Tribal Court document revisions or amendments made since 1982 require or have required Te-Moak Council approval. After such approval, these revisions or amendments shall become part of the Te-Moak Tribal Court Manual. No revisions or amendments shall require further approvals.
- (d) The rules and policies in the Te-Moak Tribal Court Manual shall be enforced by the Tribe.

1-C Definitions

In this Te-Moak Tribal Court Manual, unless the context otherwise requires:

- (a) "Adult" shall mean a person who is eighteen (18) years of age or older.
- (b) "Chairperson" shall mean the Chairperson of the Te-Moak Tribe of Western Shoshone Indians of Nevada.
- (c) "Council" shall mean the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, which is responsible for passing resolutions, setting policy, setting rules and making decisions during the meetings of the Council, unless otherwise specifically stated otherwise.

- (d) "Court Clerk" shall have the same meaning as Master Clerk and shall mean the Court Official responsible for the administration of the Te-Moak Tribal Court.
- (e) "Court Manual" shall mean the Te-Moak Tribe of Western Shoshone Indians of Nevada Tribal Court Manual.
- (f) "Indian" shall mean any person who is a member of any Indian tribe recognized by Federal or state jurisdiction, or who is an Alaska Native and member of a Regional Corporation as defined in 1606 of title 43, United States Code.
- (g) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- (h) "Juvenile Court" shall mean the judge(s) of the Tribal Court specifically convened to preside over proceedings involving a juvenile person.
- (i) "Master Clerk" shall have the same meaning as Court Clerk and shall mean the Court Official responsible for the administration of the Te-Moak Tribal Court.
- (j) "Non-Indian" shall mean a person who is not an Indian.
- (k) "Person" shall mean a natural person, a corporation or unincorporated Indian association.
- (l) "Property" shall mean both real and personal property.
- (m) "Tribe" shall mean the Te-Moak Tribe of Western Shoshone Indians of Nevada.
- (n) "Tribal Courts" shall mean the Tribal Court and Court of Appeals for the Te-Moak Tribe of Western Shoshone Indians of Nevada.
- (o) "Tribal Court" shall mean the Tribal Court of Original Jurisdiction for the Te-Moak Tribe.
- (p) "Tribal Member", "Enrolled Member" or "Member" shall mean an enrolled member of the Tribe, unless otherwise specifically indicated.
- (q) "Tribal Official" shall mean a duly elected or appointed leader of the Tribe holding office at the time of the occurrence.
- (r) "Tribal Police" shall mean the Te-Moak Tribe of Western Shoshone Indians of Nevada Tribal Police Department.

1-D **Legal Name**

- (a) The legal name of the Tribe is "Te-Moak Tribe of Western Shoshone Indians of Nevada."
- (b) All Tribal Court entities and enterprises shall use the legal name of the Tribe in all circumstances and the name "Te-Moak Tribal Court of the Te-Moak Tribe of Western Shoshone Indians of Nevada" or "Te-Moak Tribal Appellate Court of the Te-Moak Tribe of Western Shoshone Indians of Nevada" on all signs and stationery.
- (c) It is strictly prohibited for any other Te-Moak entity, enterprise and/or Te-Moak Tribal member to use this Tribal Court legal name and/or Tribal Court emblem. It is also strictly prohibited for any non-Te-Moak entity, enterprise or person to use this legal name and/or emblem.

CHAPTER 2: Judicial Power and the Tribal Courts

2-A Jurisdiction

The Tribe has jurisdiction over its members and over all areas within the exterior boundaries of the Tribal Lands, subject to some exceptions. Jurisdictional rules are set forth in greater detail in Chapter 2, Subsection 2-C.

2-B Judicial Power

(a) The judicial powers of the Tribe shall be vested in an Appeals Court and a Tribal Court of Original Jurisdiction and shall extend to all cases and controversies in law and equity arising under and authorized by the duly enacted laws of the Te-Moak Council.

(b) The Court of Appeals and the Tribal Court of Original Jurisdiction shall have, but are not limited to the following powers:

1. To compel witnesses to attend and testify and produce documents or other tangible objects to be used as evidence, provided that a defendant in a criminal trial may not be compelled to be a witness against himself.
2. To punish any Tribal officer and/or other persons present or compelled to attend judicial proceedings for contempt of Court.
3. Interpret Tribal laws, ordinances, rules and regulations.
4. Interpret the Articles of the Te-Moak Tribal Constitutional.
5. Settle legal disputes.
6. Punish violators of Tribal law.
7. Hear civil cases.
8. Protect the individual rights granted to Tribal members by the Te-Moak Constitution.
9. Determine the guilt or innocence of those accused of violating criminal laws of the Tribe.
10. Act as a check and balance upon the legislative and executive branches of the Te-Moak Tribal government.

2-C The Tribal Court of Original Jurisdiction ("Tribal Court")

(a) Composition. The Tribal Court of Original Jurisdiction shall be referred to as the Tribal Court and shall consist of a Chief Judge appointed by the Tribal Council.

(b) Court Sessions. Regular sessions of the Tribal Court shall be held at times and places designated by the Chief Judge.

(c) Qualification of Judges. Any person considered for the position of Judge must meet each of the following qualifications:

- (1) Be over twenty-one (21) years of age.
- (2) Be deemed of Good Moral Character by a majority vote of the Tribal Council before taking judicial office.
- (3) Be deemed proficient in legal education and skills by a majority vote of the Te-Moak Tribal Council before taking judicial office.
- (4) Must undergo a thorough and comprehensive background check to the satisfaction of a majority of the Te-Moak Tribal Council.
- (5) Must show written proof of being in Good Standing and licensed to practice law with at least one State Bar Association.

(d) Disqualification of Presiding Judge. No sitting Judge shall hear or rule upon a case wherein he/she has an interest in or wherein any relative, by marriage or blood is a party in the case. Any party to a proceeding may raise a conflict-of-interest issue regarding the sitting Judge in a specific case.

(e) Removal. Any Judge of the Tribal Court may be suspended, dismissed or removed as per the Te-Moak Constitution and for any of the following reasons:

1. Conviction of a felony in any court.
2. Conviction of any offense involving moral turpitude in any court.
3. Conviction of the offense of disorderly conduct.
4. Being under the influence of alcoholic beverages while presiding over Court.
5. Any other conduct unbecoming to a Judge of the Tribe Tribal Court.

(f) A Judge shall be given a full and fair hearing to reply to any and all charges. If a Judge of Original Jurisdiction is charged, then the Appellate Judge shall preside over the hearing. If the Appellate Judge is charged, then the Judge of Original jurisdiction shall preside over the hearing.

2-D **The Court of Appeals**

- (a) **Jurisdiction.** The Court of Appeals shall have jurisdiction to hear appeals from final orders and final judgments of the Tribal Court.
- (b) **Composition.** The Court of Appeals shall consist of a qualified individual as appointed by a majority vote of the Te-Moak Tribal Council.
- (c) **Sessions.** The Court of Appeals may consider the appeal during a scheduled special appellate court hearing.
- (d) Only the Tribal Court Judge may stay a sentence or decision pending the appeal process.
- (e) **Criminal Appeals.** A person convicted of a violation of the Tribal Law and Order Code may appeal their conviction to the Court of Appeals by filing a written notice with the Tribal Master Clerk. The written notice must be filed with the Court and stamped within ten (10) calendar days after the finding of guilt by the Tribal Court.
- (f) **Civil Appeals.** The decision of the Tribal Court or jury may be appealed to the Court of Appeals by filing a written notice with the Tribal Master Clerk. The written notice must be filed with the Court and stamped within ten (10) calendar days after the final decision.
- (g) All written notices of appeal shall include the specific order of the Tribal Court or jury that is being appealed. The written notice shall also include the remedy requested.

2-E **Right of Appeal**

- (a) Any party to a case, other than the prosecution in a criminal case, who is aggrieved by a final order or final judgment of the Tribal Court, shall have the right to appeal to the Court of Appeals.
- (b) The appealing party shall file with the Master Clerk a notice of appeal, along with a filing fee of five hundred dollars (\$500.00) within ten (10) days after the entry of the final order or final judgment from which appeal is taken. The filing fee may be waived in the appeal of a criminal conviction if the defendant files an affidavit proving to the Court's satisfaction that he/she is without funds to pay the filing fee. If the Tribal Appellate Court is satisfied that the defendant is without funds to pay the filing fee, it shall order that the fee be permanently waived.
- (c) If the Tribal Appellate Court finds that any, or a combination of the following has occurred, it shall order the judgment reversed, or remand the case to the Court of Original Jurisdiction for retrial:
 - 1. The appellate court determines that a legal error occurred in applying the Tribal law at the lower court level. The appellate court will generally reverse a lower court only for an error in applying the law.

2. That a ruling, order, or abuse of discretion has occurred preventing a fair trial.
3. That newly discovered evidence which could not, with reasonable due diligence, have been produced at trial has been discovered.
4. That there is insufficient evidence to support the verdict.
5. That an error of law occurring at the trial level has occurred proving to be prejudicial to the appellant; or
6. Legal reasons have been discovered which warrant reversal by a court when reviewing a similar appeal.

(d) If the Tribal Appellate Court finds that reversal under Paragraph (c) of this section is unwarranted, it shall affirm the judgment or order appealed from; no further appeal shall thereafter be permitted.

2-F **Te-Moak Wellness Court**

(a) Purpose. The Wellness Court shall be established as an alternative to trial court. It shall have special jurisdiction with authority to hear all drug-related cases referred to it by the Judge of the Te-Moak Tribal Court of Original Jurisdiction and pursuant to the Te-Moak Law & Order Code. Cases referred to the Wellness Court shall have a focus on healing as an alternative to jail.

(b) Composition. The Judge of the Te-Moak Tribal Court of Original Jurisdiction shall have exclusive jurisdiction and preside over the Wellness Court.

(c) Court Sessions. Participants in the Wellness Court shall appear regularly before the Judge throughout the duration of their participation.

(d) Policies and Procedures. The Wellness Court shall follow the Te-Moak Tribal Court Manual and the Te-Moak Law & Order Code. The Court shall also address the issues of confidentiality, drug treatment, responsibility, community involvement, and all other necessary components of Tribal Healing. The Wellness Court shall adhere to all rules and guidelines of the Te-Moak Tribal Court Manual.

CHAPTER 3: **Jurisdiction of the Tribal Court**

3-A **Territorial Jurisdiction of the Tribal Court**

Jurisdiction of the Tribal Court shall extend to all territory within the present exterior boundaries of the Tribe and all roads, water and to any lands which may be added to the Tribe in the future, or which may become subject to the jurisdiction of the Tribe.

3-B **Personal Jurisdiction**

(a) The word "person" shall include any human individual, any firm, any company, any association, or corporation as it relates to judicial jurisdiction.

(b) The Tribal Court shall have jurisdiction over the following persons, except as limited by federal law:

1. Any person residing, located or present within the Tribal territory for:

A. Any civil cause of action; or

B. Any charge of a criminal offense prohibited by the Te-Moak Law & Order Code or other ordinances of the Tribe, when the offense is alleged to have occurred within the Tribal boundaries.

2. Any person who transacts, conducts, or performs any business or activity within the Tribal boundaries, either in person or by an agent or representative, for any civil cause of action or charge of criminal offense for any act expressly prohibited by the Te-Moak Law-and-Order Code or other ordinances adopted by the Tribal Council.

3. Any person who owns, uses or possesses any property within the exterior boundaries of the Tribe, for any civil cause of action or charge of criminal offense prohibited by the Te-Moak Law & Order Code or other ordinances of the Tribe arising from such ownership, use or possession.

4. Any person who commits a tortious act or engages in tortious conduct within the exterior boundaries of the Tribe, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct.

5. Any person who commits a criminal offense prohibited by the Te-Moak Law & Order Code or other ordinances of the Tribe, by his or her own conduct or the conduct of another for which he is legally accountable, if:

A. The conduct occurs either wholly or partly within the Tribal lands.

B. The conduct which occurs outside the Tribe constitutes an attempt, solicitation, or conspiracy to commit an offense within the Tribe, and an act in furtherance of the attempt or conspiracy occurs within the Tribe; or

C. The conduct which occurs within the Tribe constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited by the Code or ordinances of the Tribe and such other jurisdiction.

(c) None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

3-C **Exclusive Original Jurisdiction**

(a) The Tribal Courts shall have exclusive original jurisdiction in all matters in which the Tribe or its officers or employees are parties in their official capacities or in which two or more Tribal entities are in conflict.

(b) Nothing contained in Subsection (a) or elsewhere in the Code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises unless specifically denominated as such.

3-D **Actions By or Against Tribe Officers or Employees**

(a) In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following modifications to the rules or procedures set forth in the Te-Moak Law and Order Code shall apply:

1. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.
2. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post security by bond or otherwise for any purpose.
3. No civil action brought against the Tribe or its officers and employees arising from the performance of their official duties shall be tried before a jury. All such actions shall be tried before the Tribal Court Judge.
4. In an action against the Tribe, or its officers or employees in their official capacity, service of process must be accomplished by delivering the Petition and the Summons to each respective accused individual during normal business hours.

3-E **Civil Jurisdiction**

(a) The Tribal Court shall have jurisdiction over all civil causes of action.

(b) Personal jurisdiction means that the Tribal Judge has the power or authority to make decisions that affect a person. Tribal personal jurisdiction shall exist over all persons who are Indians, or all persons, who consent to the jurisdiction of the Tribal Court. The act of entry upon territory within the exterior boundaries of the Te-Moak Tribe shall conclusively be deemed consent to the jurisdiction of the Court with respect to any civil action arising out of such entry.

(c) The act of entry upon territory within the exterior boundaries of the Te-Moak Tribe by an off-reservation seller, or agent of the seller to deliver goods to the Te-Moak Tribe shall conclusively be deemed consent by the seller to the jurisdiction of the Tribal Court for any dispute arising out of the sales, regardless of where the contract was entered into.

3-F **Criminal Jurisdiction**

The Tribal Court shall have criminal jurisdiction over all offenses enumerated in the Te-Moak Law and Order Code, and any subsequent ordinances adopted by the Tribe when committed within the jurisdiction of the court by any Indian, or by any other person to the fullest extent allowed by any current or future federal or state law, statute, regulation, or case.

3-G **Probate Jurisdiction**

The Tribal Court shall have probate jurisdiction over all the real and personal property located within the jurisdiction of the Court at the time of death of a decedent and the personal property, wherever located, of any member of the Tribe who is a resident on Tribal lands at the time of death.

3-H **Juvenile Jurisdiction**

(a) The Tribal Court shall have original jurisdiction in all proceedings and matters relating to need for supervision, foster care, training, status offenses and other matters not relating to delinquent acts affecting Indians or Tribal members under the age of eighteen (18), when such children are residing within the jurisdiction of the Court. Jurisdiction over a juvenile relative to a delinquent act shall be the same as for criminal jurisdiction. Juvenile Jurisdiction shall be exercised consistent with the provisions of the Indian Child Welfare Act of 1978, P.L. 95-608.

(b) The Tribal Court shall accept and exercise any portion or incident of jurisdiction transferred to or shared with the Tribal Court, generally or in any particular case by any state, federal or other tribal court.

3-I **Service of Process**

Service of Process ("summons") is the procedure by which a person to a lawsuit gives notice of a legal action against another person. The service of process extends jurisdiction over that person so as to force that person to respond to the legal action before the Tribal Court. Service may be made upon any person subject to the Tribal Court's jurisdiction under this subsection by:

(a) Personally, serving the summons upon the respondent who resides outside of the exterior boundaries of the Tribe. Such summons shall have the same force and effect as though service had been made personally within the Tribe's exterior boundaries.

(b) Personally, serving the summons upon the respondent who resides inside the exterior boundaries of the Tribal Reservation.

(c) Certified mail, return receipt requested, upon the respondent who resides outside of the exterior boundaries of the Tribe; or

(d) Through published notice in a newspaper within the jurisdiction of the respondent's last known address.

(e) Nothing in this subsection limits or affects the right to serve process in any other manner.

3-J Wellness Court Jurisdiction

(a) The Tribal Wellness Court may exercise jurisdiction over individuals who:

1. Meet the eligibility criteria of the Te-Moak Tribal Court Manual; and
2. Are accepted for admission by the Te-Moak Tribal Judge of Original Jurisdiction.

(b) Individuals may be referred to the Wellness Court by:

1. The Tribe Tribal Court or another court.
2. Social Services, Tribal Police, or another Tribal Agency; or
3. Self-referral or referred by a parent or legal guardian. An unemancipated juvenile must have the permission of a parent or legal guardian to self-refer to the Wellness Court.

(c) Continuing Jurisdiction. Wellness Court participants, including self-referrals, must agree to the continued jurisdiction of the Wellness Court throughout the duration of the program. In the event that a participant is terminated from the Wellness Court, the case will be transferred to Tribal Court for adjudication.

(d) Wellness Court participation may be ordered by the Tribal Court Judge if:

1. The defendant is 18-20 years old:
 - A. Receives part of a suspended sentence or deferred conviction after a guilty or no contest plea in the Tribal Court.
 - B. Is a requirement of pre-prosecution diversion.
 - C. Is part of a Social Services Case Plan; or
 - D. Is a requirement after self-referral.

2. If the defendant is under the age of 18:

- A. Receives part of a suspended sentence, or a deferred juvenile finding after a plea of responsible in a juvenile delinquency matter in the Tribal Juvenile Court.
- B. Is a requirement of pre-prosecution diversion.
- C. Is part of a Social Services Case Plan; or
- D. Is a requirement after self- or parental referral.

(e) Continuing Jurisdiction. Wellness Court defendants, including self-referrals, must agree to the continued jurisdiction of the Wellness Court throughout the duration of the program. If a defendant is terminated from the Wellness Court, the case will be sent to Tribal Court for appropriate adjudication.

CHAPTER 4 **Administration of the Court**

4-A **Court Rules**

The Judge of the Te-Moak Tribal Court of Original Jurisdiction shall promulgate rules to govern court proceedings, subject to a majority vote of the Te-Moak Tribal Council, provided that such rules shall not abridge, enlarge or modify any substantive rights and shall preserve the right of trial by jury as provided in Chapter 6 of this Manual.

4-B **Tribal Court Fees & Costs**

(a) The following shall constitute the fee schedule for Tribal Court cases.

- 1. Civil Petitions. There will be a thirty dollar (\$30.00) filing fee assessed on anyone filing a Civil Petition in Tribal Court against another party.
- 2. Domestic Relations. For domestic relations matters (e.g., divorce, custody, paternity, adoption) the filing fee is thirty dollars (\$30.00).
- 3. Administrative Appeals. For appeals from administrative or regulatory decisions to the Tribal Court, the fee is one hundred dollars (\$100.00).
- 4. Foreign Judgments. The fee for filing a petition to enforce a foreign judgment is one hundred dollars (\$100.00).
- 5. Traffic Citation Hearings. For all traffic hearings, the court cost is seventy-five dollars (\$75.00).

6. Default Judgments. There is a three-hundred-dollar (\$300.00) fee for a default judgment rendered by the Court.

7. Garnishments. There is a one-hundred-dollar (\$100.00) fee for each garnishment filed for recognition in the Tribal Court.

8. Appeals. The filing fee to appeal a case to the Court of Appeals is five hundred dollars (\$500.00).

(b) The following shall constitute the other fees and costs for Tribal Court services.

1. Service of Process. There is a twenty-dollar (\$20.00) fee for service of process.

2. Bar Admission Fees. Attorneys and advocates shall pay the following fees to practice in the Tribal Court:

A. Three-Hundred-dollar (\$300.00) fee due at admission.

B. Annual renewal fee (due January 15) of two hundred dollars (\$200.00).

C. No fee is required for attorneys employed by the Tribe or persons appearing before the Court, pro se.

3. Copies. Each page of a legal document copied by the Court Clerk is fifty cents (\$0.50). Copies of CDs or DVDs are twenty dollars (\$20.00) each.

4. Certified Copies. The fee for certified copies of court documents shall be fifteen dollars (\$15.00) plus fifty cents (\$0.50) per page.

5. Research and Retrieval. For research and retrieval by Tribal Court staff, the fee is twenty-five dollars (\$25.00) per hour, plus fifty cents (\$0.50) page.

6. Notary Services. The fee for each signature that is to be notarized is five dollars (\$5.00) per signature.

7. Returned Check Fee. A fifty-dollar (\$50.00) fee shall be imposed for any check returned by an individual's bank for non-payment.

4-C Court Fees & Costs Guidelines

(a) The fees in Subsection 4-B are not exhaustive and nothing shall prevent the Court from assessing additional fees and costs in accordance with relevant provisions of the Te-Moak Law and Order Code. These fees may include, but are not limited to:

1. Witness fees;

2. Juror fees;
3. Incarceration costs; and
4. Fines for contempt of court.

(b) Tribal Officials or Tribal Representatives acting in an official capacity on behalf of the Tribe are excluded from filing fees.

(c) No fee shall be charged for filing a Domestic Violence Petition.

(d) The Court may waive fees in cases of proven indigency.

(e) Should the Tribal Court rule in favor of the Petitioner, the Judge may order the Respondent to reimburse the Petitioner for filing fees, Court costs and reasonable attorneys' fees.

4-D **Coroners**

(a) The Te-Moak Tribal Council by a majority vote may appoint one or more coroners to serve the Tribe. Such coroners shall serve without pay but may be reimbursed for actual and necessary expenses upon presentation of proper vouchers of the Chairperson of the Tribe.

(b) Whenever a coroner is informed that an Indian has died within the Tribe, the coroner shall go to the place where the body is located and inquire into the cause of death.

(c) After inspecting the body and conferring with a physician, if the coroner himself is not a physician, the coroner shall make a written report stating the following facts, if known:

1. The name and census number of the dead person.
2. When and where he died and the circumstances of his death.
3. The cause of death.
4. Who caused the death, if caused by act, whether criminal or not?
5. What property is found on the body, other than clothing of ordinary value; and
6. Where the coroner is not a physician, the name and address of any physician consulted.

(d) The coroner shall submit copies of the report to the Tribal Police, to the Tribal Chairperson and to the Bureau of Indian Affairs Agency Superintendent.

4-E **Tribal Police**

The Te-Moak Tribal Council shall be recognized as commander of the Tribal Police of the Tribe and shall be held responsible for the general efficiency and conduct of the members thereof. It shall be the duty of the Te-Moak Tribal Council, or their duly authorized representative to remain informed as to the efficiency of the Tribal Police in the discharge of their duties; to subject them to regular inspection; to inform them of their duties; and to keep a strict accounting of the equipment issued to them in connection with their official duties. It shall be the duty of the Te-Moak Tribal Council to detail such Indian Policemen as may be necessary to carry out the orders of the Tribal Court and to preserve order during Court sessions. The Te-Moak Tribal Council shall investigate all reports and charges of misconduct on the part of Tribal policemen and shall exercise such proper disciplinary measures as may be consistent with existing regulations.

4-F **Police Training**

(a) It shall be the duty of the Te-Moak Tribal Council to maintain Tribal police training from time to time, as circumstances require, and permit classes or instruction for the Tribal Policemen. Such classes shall familiarize the policemen with the manner of making searches and arrests; the proper and humane handling of prisoners; the keeping of records of offenses; and the duties of the police in relation thereto, and other subjects of importance for efficient police duty. It shall further be the purpose of the classes to consider methods of preventing crime and of securing cooperation of Tribal residents in establishing better social relations.

1. A candidate must be in sound physical condition and of sufficient strength to perform the duties required.
2. He/she must possess courage, self-reliance, intelligence, and a high sense of loyalty and duty.
3. He/she must never have been convicted of a felony (even if expunged or sealed), nor have been convicted of any misdemeanor for a period of one year prior to appointment.
4. He/she must be of excellent moral character as determined by a majority vote of the Te-Moak Tribal Council.

(b) The duties of a Tribal policeman shall include but not be limited to:

1. To obey promptly all orders of the Tribal Police Commander and/or a majority vote of the Te-Moak Tribal Council when assigned to that duty.
2. To aid fellow police officers.
3. To report and investigate all violations of any law or regulation to the Te-Moak Police Commander and to the Te-Moak Tribal Council.

4. To arrest all persons observed violating the laws and regulations of the Te-Moak Tribe.
5. To remain informed as to the laws and regulations applicable to the Tribe, and the laws regarding arrest;
6. To prevent violations of all Te-Moak laws and regulations.
7. To report all accidents, births, deaths or events of importance to his/her superior officer.
8. To abstain from the use of intoxicants or narcotics, and to refrain from engaging in any act that would reflect negatively upon the Tribal Police Department.
9. To refrain from the use of profane, insolent, or vulgar language.
10. To use only appropriate force or violence in making an arrest, search or seizure.
11. To keep all equipment furnished to him in reasonable repair and order.
12. To report the loss of any and all property issued by the Te-Moak Tribe in connection with official duties; and
13. To collect and issue receipts for bail.

4-G **Dismissal**

The Te-Moak Tribal Council by a majority vote may remove any Tribal police officer for noncompliance with the duties and requirements as required for a Tribal police officer or for neglect or duty.

4-H **Return of Equipment**

Upon resignation, death, or discharge of any member of the Tribal Police, all articles or property issued to him/her in connection with his/her official duties must be returned immediately to the Tribal Police Commander and/or a member of the Te-Moak Tribal Council.

CHAPTER 5 **Court Officials**

5-A **Officers of the Courts**

Officers of the Tribal Court shall include:

- (a) Judges, Attorneys, Advocates and law clerks.
- (b) Master clerks, Court clerks and Court interpreters.
- (c) Police Officers, Probation Officers and other persons when carrying out orders of the Court; and
- (d) Bailiffs.

5-B **Court Master Clerk**

(a) The Master Clerk of the Court's primary duty is to assist the Tribal Judge in the administration of their judicial duties by preparing and maintaining court records, collecting fees and fines, and processing Court paperwork. Such duties shall include, but not be limited to the following:

- 1. Preparing and issuing summonses, probation orders, subpoenas, warrants and writs to ensure Court compliance as per the orders of the Tribal Court Judge.
- 2. Maintain and secure all records for Tribal Court proceedings.
- 3. Administer oaths to Court participants.
- 4. Collect Court fines and account for other property taken into the custody by the Courts.
- 5. Accept and record bonds; and
- 6. Review and stamp filed petitions, summonses, and appeals.

(b) Assistant Clerks of the Court may be employed as deemed necessary by the Tribal Judge.

5-C **Representation Before the Tribal Court**

A person may represent himself before the Tribal Court, pro se, or have an advocate or a professional attorney serve as his counsel. To protect the best interests of the Te-Moak people, all advocates and attorneys appearing before the Te-Moak Tribal Court must first be properly accepted and admitted to the Te-Moak Tribal Court Bar and successfully pass its legal proficiency and ethics exams

5-D **Standards for Practitioners Appearing Before the Te-Moak Tribal Court**

- (a) All participants appearing before the Tribal Court including lawyers, advocates and pro se participants must display legal competence and diligence in all court proceedings and have a working knowledge of the Te-Moak Law & Order Code, Tribal Court Rules and Tribal Court rules of Procedure.
- (b) All participants appearing before the Tribal Court including lawyers, advocates and pro se participants must use the law's procedures only for legitimate purposes and not to harass or intimidate other Tribal members including but not limited to elected Tribal Officials.
- (c) All participants appearing before the Tribal Court including lawyers, advocates and pro se participants must demonstrate respect for the Tribal Court and for those who serve it, including judges, court clerks, bailiffs, other lawyers, opposing participants and public officials.
- (d) All participants appearing before the Tribal Court including lawyers, advocates, pro se participants, and all court attendees must conduct themselves in an orderly and courteous manner.
- (e) All participants appearing before the Tribal Court including lawyers, advocates and pro se participants must arrive in court on time and must be prepared for all appearances.
- (f) All lawyers and advocates appearing before the Tribal Court must comply with the rules of professional conduct in all jurisdictions in which they are licensed to practice, as well as, with the Te-Moak Tribal Court rules of professional conduct.
- (g) All participants appearing before the Tribal Court including lawyers, advocates and pro se participants shall be candid with the Court and shall not make false statements of fact or law to the Tribal Court or fail to correct a false statement of material fact or law previously made to the Court.
- (h) All lawyers, advocates and pro se participants shall refrain from participating in litigation that is without merit or that is designed primarily to harass or drain the financial resources of the opposing party.
- (i) All lawyers, advocates and pro se participants must refrain from impugning the integrity of the Te-Moak Tribal Court, its judicial system, its proceedings, and/or its members. Failure to comply with the requirements of these rules may subject lawyers, advocates and pro se participants to sanctions and/or disbarment from the Te-Moak Tribal Court.

5-E **Public Defender Office**

- (a) If funding permits, the Tribe shall establish an Office of the Public Defender.
- (b) The Public Defender shall charge an hourly rate of one hundred (\$100.00) per hour.

5-F **Attorney-Client Privilege**

Any Tribal Counsel subpoenaed in any Court of Law shall assert, to the extent legally allowed the attorney-client privilege.

5-G **Public Records**

Except as otherwise provided in the Te-Moak Law & Order Code, the Tribal Master Clerk shall keep a record of all proceedings of each Court session. Such records shall include the title of the case, the names and addresses of parties and witnesses, the substance of the complaint, the date of the hearing, the findings of the Tribal Court or jury, and the judgment or order entered. Unless specifically exempted by the Te-Moak Law & Order Code or by an order of the Tribal Judge, the records of the Court shall be open to the public.

CHAPTER 6

Rules – General

6-A

Subpoena

(a) Content.

Every Subpoena shall:

- (1) state the name of the issuing Tribal Court.
- (2) state the title of the proceeding cause of action and its civil-action number.
- (3) command each person to whom it is directed to perform a specific task at a specific time and location; attend the proceeding and truthfully testify; produce specific documents, electronically stored information or tangible items in the person's possession or control; or permit inspection of the premises.
- (4) contain the signature of the Te-Moak Tribal Judge.

(b) Service.

A subpoena must be delivered to the named person or left at his/her place of residence with any competent person eighteen (18) years of age or older. If the subpoena commands the presence of the person then fees and mileage may be tendered to the person. If the subpoena is issued by the Te-Moak Tribal Council or by the Te-Moak Tribal Court then fees and mileage need not be tendered. The Tribal Court Clerk may act on behalf of the Tribal Court or on behalf of a party to the case and issue subpoenas which have been signed by a Judge and which are to be served within the exterior boundaries of the Tribe. The person issuing the subpoena must file a statement with the issuing court showing the date and manner of service and the names of the persons served. The statement must be certified by the server. Any person who is at least eighteen (18) years of age and not a party to the court proceeding may serve a subpoena.

(c) Place of Compliance.

The subpoena may require a person to be present at a hearing, trial or deposition within the exterior boundaries of the Tribal reservation.

(d) Enforcement.

Any person who fails to obey a subpoena may be deemed to be in contempt of Court and either sanctioned or issued a bench warrant for their arrest.

(e) Witness Fees & Mileage.

(1) Any witness subpoenaed to testify in a court proceeding may be reimbursed for fees and mileage by the party issuing the subpoena. This action may be taken at the Court's sole discretion.

6-B

Trial Procedures

- (a) The time and place of Tribal Court sessions, and all other details of judicial procedure shall be set out in rules of the Court adopted pursuant this Chapter.
- (b) The Tribal Court shall not be bound by common law rules of evidence, or the rules of evidence which pertain in state or federal courts.

6-C

Jury Trials

- (a) Request for Jury Required. A jury trial shall be held in a civil trial if either party makes a written request to the Court at the time of filing and if a jury trial is not otherwise specifically prohibited by the Te-Moak Law and Order Code. A defendant in a criminal case may request a jury trial if the possible penalty for the offense is imprisonment.
- (b) Jury Pool. A list of eligible jurors shall be prepared and maintained by the Tribal Council or its representative. Any person over the age of twenty-one (21) years, not subject to judicial restraint by any Court, and who resides within the Tribe may be listed as an eligible juror.
- (c) Formation. Juries will be comprised of six (6) jurors and one alternate. A person may be excused from serving on a jury upon good cause shown under oath to a Judge. Jurors whose employers provide for compensated leave for jury service shall not be excused by the Court because of work-related responsibilities, except under extraordinary circumstances. The Judge shall consider the needs of the Court to maintain an adequate jury pool before allowing jurors to be excused. Elected Tribal Officials shall be exempt from serving on juries during their terms of office.
- (d) Random Selection. The Clerk of the Court shall randomly select a minimum of twenty-five (25) names from the jury pool.
- (e) Juror Summons. The Court shall issue summons and thereby notify persons selected for jury service. Persons selected for jury service shall be summoned by mail or by personal service. Persons who do not appear after proper notice of jury service shall be subject to contempt of Court.
- (f) Selection. The Court Clerk shall notify the Court and counsel of the names of the members of the jury pool appearing for selection. In selecting a jury from among the panel members, in all instances the Judge shall conduct the initial questioning of the jurors to establish eligibility, ability to serve and potential bias. When the Court determines that a juror cannot serve, the juror shall be excused. The Judge may use his or her discretion to permit the parties to ask questions and, moreover, may limit examination of jurors when the Judge believes such examination to be improper or unacceptably time consuming.
- (g) Challenges/Excusals. Each party shall have the right to a maximum of three (3) preemptory challenges for jurors, for which no reason need be given and which the Judge may not refuse to grant.

(h) Compensation of Jurors. Every person who is required to attend Court for selection or service as a juror shall be entitled to fees for each day, unless otherwise compensated through Tribal ordinance. Jurors whose employers provide for compensated leave for jury service shall not be entitled to fees. Jurors shall be compensated at a rate recommended by the Tribal Judge and provided in the rules of the court. Compensation of jurors is considered to be a court cost that shall become the responsibility of the party requesting a jury.

(i) Juror Oath. The jury shall be sworn in by the Court. Any juror who violates the oath may be held in contempt of Court.

(j) Juror Instructions and Deliberations. The Judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact in the basis of that law. The jury shall deliberate in secret and return a verdict of "guilty" or "not guilty." The Tribal Judge shall render judgment in accordance with the jury verdict. A jury may render a verdict by majority vote in civil cases. In criminal cases a verdict of "guilty" must be either unanimous or by vote of five (5) to one (1).

(k) Discharging Jurors. When the jury has reached a verdict or has determined that it shall be unable to do so, even with additional deliberation, the Court shall discharge the jurors from service.

6-D **Contempt of Court**

(a) The Judges of the Tribal Courts may rule a person in contempt of Court if he/she willfully and unjustifiably disrupts, obstructs or otherwise interferes with the due and orderly course of proceedings in the courtroom.

(b) All rulings of and sentences for contempt shall be announced immediately after the acts of contempt occur.

(c) A person found in contempt of court may be sentenced to imprisonment for a period not to exceed three hundred and sixty-four days (364) days and/or ordered to pay a fine not to exceed five thousand dollars (\$5,000.00), or both.

CHAPTER 7 **Rules of Civil Procedure**

7-A **Scope of Rules; Construction; Alternate Sources**

(a) Scope. These rules govern the procedure in all civil actions and proceedings in the Tribal Court. These rules must be applied to resolve disputes efficiently and render justice fairly and without prejudice. All cases before the Tribal Court shall be conducted in accordance with the Te-Moak Law and Order Code and with Te-Moak Tribal customs and traditions. These civil rules also apply in criminal matters when no rule is specified in the Rules of Criminal Procedure.

(b) Mission of the Court. The mission of the Te-Moak Tribal Court is to be fair, unbiased and to render justice in all cases brought before the Tribal Court.

(c) Construction. These rules will be liberally interpreted and administered to secure a just, speedy, and inexpensive judgment in every civil and criminal cause of action.

(d) Alternate Source for Rules. In a situation where these rules do not contain a procedure, the parties and the Court may agree on a procedure, or the Court may determine the procedure that will be followed. The Federal Rules of Civil Procedure shall apply to any procedures or matters that are not specifically covered in this Court Manual or in the Te-Moak Law & Order Code.

(e) Citation Form. These rules shall be known as the Te-Moak Rules of Civil Procedure and will be cited as "TMRCP".

7-B **Sovereign Immunity**

Nothing in these rules shall affect the right of the Tribe to assert immunity from suit by virtue of its status as a sovereign.

7-C **Time**

(a) How Time is Computed. Whenever a rule or a court order requires that an action be taken within a certain number of days the following shall apply:

1. The day of the event that starts the time period shall not be included in the computation.
2. Every calendar day, including Saturdays, Sundays, and legal holidays shall be counted; and
3. The last day of the time period shall be included, but if the last day is a Saturday, Sunday, or Court holiday, the period shall continue to run until the end of the next day that is not a Saturday, Sunday, or Court holiday.
4. Any time period ordered that is ten (10) days or shorter shall not include Saturdays, Sundays, or Court holidays.

(b) Extensions of Time. Upon the request of a party and for good cause, the Court, in its own discretion, may allow for an extension of the time limit described in these rules.

7-D **Definitions**

In addition to the definitions provided for in Chapter 1, Subsection 1-C of the Court Manual, the following definitions shall apply:

(a) Amendment. A change to a Petition, Answer, counterclaim, or other court pleading.

- (b) Answer. The document filed by the party defending against a claim or Petition.
- (c) Counterclaim. A claim or Petition by a respondent against a plaintiff.
- (d) Crossclaim. A claim made against another party on the same side of a given lawsuit: e.g., a respondent against another respondent or a plaintiff against another plaintiff.
- (e) Default. Failure by a given party to defend a case within the time allowed under the rules, or a failure to appear in Court when ordered to do so.
- (f) Defendant. The party against whom an action is brought in a criminal proceeding. The term “defendant” is also sometimes used in a civil proceeding.
- (g) Execution. Enforcement of a judgment.
- (h) Judgment. The decision of the Court on a given cause of action.
- (i) Party. A person or company that is being sued or that is suing another party; e.g., the plaintiff or defendant in a criminal case or the petitioner or respondent in a civil case.
- (j) Petition. The written statement of facts and a request for Court action that is filed with the Tribal Court to start a civil lawsuit.
- (k) Petitioner or Plaintiff. The party who files a civil petition in a Tribal Court.
- (l) Pleading. Any documents filed or required to be filed with the Court that pertain to a given lawsuit that is initiated by a party.
- (m) Process. A legal document or documents that assert the Court’s power (jurisdiction) to compel a person to appear in the Tribal Court.
- (n) Respondent. The party against whom the petitioner/plaintiff files against in a civil Petition.
- (o) Service. The manner in which delivery of the Summons or other pleading is made to the opposing party in a civil lawsuit.
- (p) Stipulation. An agreement between the parties that is submitted to the Court.
- (q) Subpoena. An order of the Court requiring a witness to attend and to testify at a hearing or trial.
- (r) Summons. The document that tells a respondent that he or she is being sued and asserts the power of the Court to hear and determine the case.

(s) Third-Party Petition. A Petition filed by the respondent against a third-party (i.e., a person not presently a party to the lawsuit) alleging that the third party is or may be liable for all or part of the damages which the petitioner may win from the respondent.

(t) Waive. Intentionally giving up a claim or right in a Court of law, either through a statement or through action or inaction.

7-E **Jurisdiction**

(a) The Tribal Court is a court of general jurisdiction.

(b) The Tribal Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Te-Moak Law and Order Code, the Indian Civil Rights Act of 1968, and other applicable Federal law.

7-F **Statute of Limitations**

(a) A civil lawsuit must be filed with the Court within two (2) years of the event at issue in the case. The two-year period starts from the date the event was first known to the aggrieved party or according to the reasonable person standard, should have been known to the aggrieved party.

(b) Civil suits filed more than two (2) years after this time period will be dismissed.

(c) This Section shall not apply to claims brought by the Tribe.

(d) Any action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one year of the date the cause of action occurred.

7-G **Representation**

(a) Pro Se Appearance. Parties may represent themselves in the Te-Moak Tribal Court.

(b) Non-Attorney Appearance. A party may be represented by a non-attorney advocate but only with the Court's permission. Whenever a non-attorney represents a party, that person shall file a written entry of appearance showing his or her name, address, and telephone number.

(c) Attorney Appearance. Permission for an attorney to practice in the Tribal Court is granted according to the provisions of the Tribal Court Manual, Chapter 5-D. Whenever an attorney represents a party, the attorney shall file a written entry of appearance showing the attorney's name, address, and telephone number. For the purpose of this rule, the filing of any pleading or paper signed by the attorney and showing the attorney's name, address, and telephone number constitutes an entry of appearance.

(d) Withdrawal of Representation Requires Court Order. An attorney or non-attorney advocate must obtain an order permitting withdrawal from an on-going case. The Court, in its sole discretion, may place conditions on the withdrawal as justice requires.

(e) Sanctions. The Court may impose sanctions upon a pro se party or upon his/her attorney or advocate if, in the Court's sole discretion, they are found to have filed a lawsuit, motion, or any other documents with a frivolous purpose to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Sanctions may include a fine of up to seven hundred dollars (\$700), court costs, and/or the reasonable attorneys' fees incurred by the opposing party required to resolve the issue.

7-H **Interpreters**

If a party or a party's witness requires an interpreter, the party requiring the interpreter must arrange and provide for interpretation at the party's own expense. If testimony is to be interpreted, the interpreter must be court-certified and approved by the Judge.

7-I **Telephonic Appearance**

The Court, at its own discretion, may hear any matter by a telephonic conference call where it serves the interests of justice.

7-J **Start of a Civil Case**

(a) Beginning a Lawsuit. A party starts a civil lawsuit by filing a written Petition with the Tribal Court along with any filing fees. The Court may waive filing fees for good cause. Every Petition must contain:

1. The name, address, and telephone number of the petitioner and the respondent.
2. A statement of the facts at issue.
3. A statement describing the rights or laws that the petitioner believes were violated (if known).
4. A statement of the relief the petitioner is asking the Court to provide, such as money damages, return of property, a restraining order, or a child custody determination; and
5. The signature of the petitioner.

Petitioners are required to use the format's approved by the Tribal Court. The Master Clerk may help petitioners by supplying necessary forms and filing guidance.

(b) Summons. When a Petition is filed, the Master Clerk will issue and sign a Summons and give the document to a Court appointed individual to serve the respondent. The Summons shall

give notice to the respondent that he or she is required to answer the Petition within a specified time period and that failure to respond may result in a default judgment.

7-K

Service and Filing

(a) Service. To proceed with a civil cause of action, the petitioner must serve (deliver) a copy of the Petition and the Summons to each respondent within ninety (90) days of the filing date.

(b) Who may Serve the Documents. Service may be made by a law enforcement officer or by any person who is not a party, is eighteen (18) years of age or older and is approved by the Court.

(c) How Served. The Petition and Summons must be served on the respondent in a way that ensures the respondent is made aware of the lawsuit and has reasonable time to defend against it. Service shall be made as follows:

1. Personal Service: Service on an individual party or on a non-Tribal business may be made by delivering the documents personally to the party, or to a person over the age of fifteen (15) years at the party's home or principal place of business. If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the documents served. The person who delivered the Summons and Petition shall file a certified statement with the Court that he/she served the papers, stating the name of the person served, the place, date, and time of service, and signing the return of service under penalties of perjury. This shall constitute proof of service.

2. Certified Mail: Service may be made by registered or certified mail, return receipt requested, provided that the envelope is addressed to the respondent and respondent or a member of their household or an employee at their place of business signs a receipt for it. The return receipt will be proof of service. Service by mail is complete on the date the receipt is signed. Service upon a business or entity of the Tribe must be made by certified mail.

3. Publication: Service by publication may be used upon a showing of good cause and upon an order of the Court. This service shall be done by publishing the contents of the Summons in a local newspaper of general circulation at least once per week for four (4) consecutive weeks, and by leaving a copy of the Petition with the Court for pickup by the opposing party.

(d) Long Arm Service. Any person subject to the jurisdiction of the Tribal Court may be served outside the territorial jurisdiction of the Tribe in the manner as provided above, and with the same force and effect as if the service had been made within the exterior boundaries of the Tribe.

(e) Time for Service. Any action may be dismissed without prejudice if service is not completed within ninety (90) days from the date of the filing of the Petition, unless good cause is shown for the delay or as justice requires. The Court's dismissal of the case means that the petition can be brought again but a new Petition must be re-filed along with new Court fees applicable to the filing of the new case.

(f) Papers other than Petition. A copy of every pleading or document filed with the Court must be mailed or provided to the opposing party or to their advocate or attorney, unless the Court orders otherwise.

(g) Service on Officers or Employees of the Tribe. If the party to be served is an officer or an employee of the Tribe acting in their official capacity, service must be made by delivering a copy of the Petition and Summons pursuant to Chapter 3-D.

(h) Serving a Minor or an Incompetent Person. If the party to be served is a minor or has a guardian, service must be made on his or her parent, guardian, or custodian.

(i) Filing by Fax or E-mail. If less than ten (10) pages total, Pleading that are less than ten (10) pages may be filed by fax or by email to the Tribal Court. A facsimile copy has the same effect as any other pleading. Pleadings and proposed orders may be electronically filed with the Court Clerk.

7-L **Pleadings, Motions, and Orders**

(a) Pleadings. Petitions, counterclaims, crossclaims, and third-party Petitions are permitted by the Tribal Court. An Answer must be filed in response to a Petition, or to a counterclaim, cross-claim and/or a third-party Petition. The Master Clerk may help petitioners by supplying the necessary forms.

(b) Motions. Any requests for the Court to take action or to issue an order must be in writing and contain a statement of the events at issue, and a statement asking the Court for specific relief. Pro Se parties are required to use the standard motion form.

(c) Construction of Pleadings. All pleadings shall be interpreted in such a way to ensure the pursuit of justice.

(d) Orders. Every order shall include specific instructions by the Court to specific parties involved in a cause of action. Orders can be made with or without notice to adverse parties and may be vacated or modified with or without notice.

7-M **Answering the Petition**

(a) Filing an Answer. Within twenty (20) days after the respondent receives a copy of the Petition and Summons, he or she must file a written Answer to the Petition and serve a copy on the petitioner.

1. In any action against the Tribe or its entities, businesses, and/or officers or employees working in their official capacities, the respondent shall have sixty (60) days to file a written Answer to the Petition and serve a copy on the petitioner.

2. An extension of time to file an Answer may be granted by the Court, in the Court's sole discretion, and upon a showing of good cause.

(b) Signature and Contact Information. The respondent must sign the Answer and provide a mailing address, telephone number and email address, if applicable.

(c) Defenses and Denials. The respondent shall state in understandable terms his or her defenses to each of the petitioner's claims. The Answer shall admit or deny the allegations made by the Petitioner. The respondent may deny part of a statement and admit the rest. If the respondent does not have knowledge about a statement or claim, he or she shall state they are without knowledge on the matter. The respondent has a duty to truthfully answer each and every allegation.

(d) Defenses. If applicable, the respondent must raise the following defenses in a motion, before filing an Answer:

1. Lack of personal jurisdiction;
2. Insufficient or incomplete Summons and/or Petition; or
3. Insufficient service of Summons and/or Petition.

The above defenses shall be considered waived if not raised before filing an Answer. Defenses raised by motion before filing an Answer, shall toll the period of time set forth to file an Answer until such time that the Court has ruled on the motion. The respondent may also raise additional defenses in the Answer.

(e) Affirmative Defenses. An affirmative defense is a defense in which the defendant introduces evidence, which, if found to be credible, will negate civil or criminal liability, even if it is proven that the defendant committed the alleged acts. In response to a pleading, a party should affirmatively state any defenses, including (1) accord and satisfaction, (2) arbitration and award, (3) contributory negligence, (4) discharge in bankruptcy, (5) duress, (6) estoppel, (7) failure of consideration, (8) fraud, (9) illegality, (10) laches, (11) license, (12) payment, (13) release, (14) res judicata, (15) statute of frauds, (16) statute of limitations, (17) waiver, and/or any other matters constituting an avoidance or an affirmative defense. If these affirmative defenses are not pled at the time the answer is filed, they may be asserted at a later time with the Court's permission.

(f) Counterclaim. A respondent may file a counterclaim against the petitioner following the same rules that apply to Petitions. A counterclaim must arise from the same events raised in the Petition. A counterclaim may be deemed waived if not filed as a counterclaim to the Petition.

(g) Motion for Judgment on the Pleadings. Any party may file a motion for judgment on the pleadings on the basis that no answer has been filed, or that the pleadings disclose that there are no material issues of fact to be resolved and that that party is entitled to judgment as a matter of law. A motion for judgment on the pleadings can only be filed once the pleadings have been closed or once the defendant has filed an answer. In determining whether to enter judgment on the pleadings, the Tribal Court is limited only to the pleadings. If matters outside the pleadings are presented to the Court, the motion will be treated as a Motion for Summary Judgment (Chapter 7-J) and all parties will be given reasonable opportunity to present materials relevant to a Motion for Summary Judgment.

(h) Default Judgment. The respondent may be subject to a default judgment if he or she does not file an Answer.

7-N **Form of Pleadings**

(a) Caption. Every pleading should contain a heading including the name of the Court, the title of the action, the Court file number (if known), and a designation as to the type of pleading it is (e.g., Petition, Answer, Motion). All pleadings shall contain the names of the parties. In the case of multiple parties, the name of the first party on each side may be used on all pleadings filed after the original Petition. Pro se parties are required to use forms provided by the Court.

(b) Paragraphs. All claims or defenses should be made in numbered paragraphs. Each paragraph should be limited to a statement of a single set of circumstances. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

(c) Signatures. The signature of the party, or advocate/attorney, must be on all pleadings filed with the Court. The signature is a certification that the pleading is submitted in good faith, that the matters of fact or law are believed to be true and accurate, and that the pleading is based on a reasonable investigation of the statements of fact or law.

7-O **Amending Pleadings; Dismissing Petition**

(a) Amending Before Trial. A petitioner may change the Petition without the Court's permission before the respondent files an Answer if a copy of the changed Petition is delivered to all parties according to the Rules for serving Petitions. After the respondent has answered the Petition, the Court may allow the petitioner to amend the Petition if the change would not be unfair to the respondent.

(b) Amending at Trial. When issues or evidence not raised in the pleadings are heard at trial, the Court may take such issues or evidence into account without amending the pleadings.

(c) Dismissing the Petition. The Court will allow a petitioner to withdraw the Petition and shall dismiss the case per the petitioner requests unless the respondent has filed a counterclaim or a dismissal of the case would otherwise be unfair to the respondent. The Court may order a

petitioner who withdraws a complaint to pay all of the respondent's fees and costs associated with the Petition.

(d) Involuntary Dismissal. If the petitioner fails to prosecute the case or to comply with the rules or an issued court order, a respondent may move to dismiss the case. Costs may be assessed against the petitioner.

7-P **Pre-Trial Conferences**

The Court may order the attorneys, advocates and pro se parties to appear for one or more pre-trial conferences whenever it appears that a conference might clarify the issues, discourage wasteful pre-trial activities, reduce trial time, or promote settlement of the case.

7-Q **Parties**

(a) Real Party in Interest. A real party in interest is the person or entity who has the right to bring suit even though someone else would ultimately benefit from the suit if successful. Every legal action must be carried out in the name of the real party in interest. A personal representative or a person in a fiduciary position, however, can sue in his or her own name without joining the party for whose benefit the action is maintained. Real parties in interest may include businesses and/or other entities.

(b) Guardian Ad Litem. Any minor or incompetent adult without a guardian, shall have a Court appoint guardian ad litem to represent the minor or incompetent person. The guardian ad litem does not have to be an attorney.

7-R **Adding Parties to a Case**

(a) Joining Parties. All interested parties, including businesses and/or other entities, may be joined in a case. Failure to join a party over whom the Court has no jurisdiction will not require dismissal of the case unless it would be impossible to reach a just judgment without that party. The failure to join a party may be taken into consideration to assure that justice is served.

(b) Intervention. A party may intervene and be treated as a party in cases where property in which the party has an interest may be affected or a question of law or fact common to a party's claim may be litigated. If a motion to intervene is granted, the opposing parties are allowed twenty (20) days after service to answer the pleading of the intervener.

(c) Substitution of Parties. If a party dies, becomes incompetent, transfers interest, or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

7-S **Discovery**

(a) Purpose of Discovery. The purpose of discovery is to ensure that the parties have access to all information and evidence related to a case in order to resolve disputes efficiently and fairly.

Each party has an obligation to share all non-privileged information and evidence related to a case.

(b) Scope of Discovery. Parties may obtain discovery regarding any matter that is not privileged and relevant to the case, even if said information would not be admissible at trial. The requested information, however, must appear reasonably calculated to lead to the discovery of admissible evidence.

(c) Interrogatories. A party may submit written interrogatories (questions) to any other party in a proceeding. Said party must answer all interrogatories, in writing and under oath, within thirty (30) days.

(d) Depositions. A party may take the oral deposition of an adverse party or non-party witnesses under oath. At least ten (10) days' notice must be given specifying the time and place of the deposition.

(e) Production, Entry, or Inspection. A party may request an opposing party to produce any documents or evidence in his/ her custody for inspection or copying. Said party may also request permission to enter and inspect property reasonably related to the case. The opposing party shall reply within ten (10) days as to whether such request will be allowed and denied.

(f) Protective Order. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense. The Court may order that the discovery cease or proceed only upon specified conditions.

(g) Failure to Make Discovery. If a party fails to respond or appear for discovery, as provided in this rule, the opposing party may ask the Court for an order to compel the other party to perform. The Court may also initiate such order sua sponte and may award costs. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain facts, claims, or defenses be deemed established, strike part of a claim or defense, dismiss the case or render a judgment by default against the non-complying party.

(h) Use of Discovery. Answers to interrogatories and depositions may be used by motion, hearing, or trial to impeach testimony or for any relevant legal purpose.

(i) Continuing Duty to Supplement; Witness List. A party is under a continuing duty to supplement responses to discovery requests if the responding party obtains: (1) information that shows a prior response was incorrect or no longer true; (2) the identity and location of persons having knowledge of discoverable material; (3) the identity of each person expected to be called as an expert witness at trial; (4) the identity of any other person expected to be called as a witness at trial; and (5) the subject matter or substance on which testimony is expected.

Any witness who is not identified in accordance with this rule shall not be allowed to testify unless the Judge orders such testimony to prevent a breach of justice.

7-T**Scheduling Cases for Trial**

(a) Date for Trial. The Court will place the case on the Court calendar with or without the request of any party as long as all parties are given adequate notice of trial dates.

(b) Postponement. Upon motion of a party and for good cause shown, the Court may postpone (continue) a trial or proceeding. The Court may require the requesting party pay any cost associated with a postponement.

7-U**Consolidation; Separate Trials**

(a) Consolidation. The Court may, upon motion of a party or upon its own motion, order that some or all issues of separate actions be tried together when there is a common issue of fact or law relating the actions or for judicial economy.

(b) Separate Trials. The Court may order a separate trial of a claim or an issue to avoid prejudice or a breach of justice.

7-V**Evidence**

(a) Form and Admissibility. All evidence admissible under the Federal Rules of Evidence or as otherwise specified in the Te-Moak Law and Order Code shall be deemed admissible. The competency of a witness to testify shall be determined in a similar manner. The Court may admit otherwise inadmissible evidence if the interests of justice so require.

(b) Examination. At all hearings and trials, the testimony of witnesses shall be taken orally and under oath. A party may call any person to be a witness and may examine any witness on any relevant matter. A party may impeach his or her own witness.

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

The Court may question witnesses to clarify issues and in the interests of justice.

(c) Physical Evidence. Written documents and other physical evidence shall be admitted at the Court's discretion.

7-W**Burden of Proof**

In a civil action, the party making the claim must prove his or her case by a preponderance of the evidence. A party shall be considered to have met this burden of proof if the evidence, when considered as a whole, tends to prove that the party's claim is more likely to be true than not true.

7-X**Determination of Foreign Law**

A party who intends to raise an issue concerning the law of a foreign jurisdiction, including the State of Nevada, will give notice in the pleadings or by other reasonable written notice. The Court, in determining foreign law, may consider any relevant sources, including testimony, whether or not submitted by a party or admissible under these rules.

7-Y**Subpoenas**

(a) Issuance. Subpoenas requiring attendance of witnesses or production of documents or things shall be issued by the Court upon request of a party and served in accordance with Chapter 6-A of this Court Manual.

(b) Subpoena Unnecessary. A person who is present in Court and not subpoenaed may be required to testify as if he or she had been subpoenaed.

7-Z**Jury Trials**

(a) Costs. The party requesting a jury trial is responsible for all costs associated with the jury trial, including juror compensation. Costs, however, may ultimately be assessed against a party or parties against whom judgment was rendered in accordance with Chapter 10-E.

(b) When Allowed. All civil actions shall be decided by the Court without a jury unless a party files a request for a jury trial at the time of the Petition or Answer. The party requesting a jury trial must submit an advance payment, as determined by the Court, by the date Jury Selection begins, and all required fees and costs not less than forty-eight (48) hours before the scheduled date of trial. The Tribal Court may, upon good cause shown, waive advance payment of the required fees and costs.

(c) Issues that may be Tried. A party requesting a jury trial may specify the issues of fact to be decided by the jury. Any other party may specify, not less than five (5) days before the date scheduled for trial, other issues of fact he or she wishes to be decided by the jury. Once a party requests that an issue be decided by a jury, the jury request may not be withdrawn without the consent of the other party or parties.

(d) Designation by Judge. The Court may, upon its own motion, order the trial by jury of any or all of the factual issues. The Court may, upon motion of any party, or on its own initiative, find that some or all of the issues designated for the jury trial should not be tried by a jury, and order that no jury trial be held on those issues.

(e) Waiver of Right to Jury. The Court may hear and decide any issues of fact without a jury if either party fails to appear at trial, regardless of requests made for a jury trial.

7-AA

Jurors

(a) Choosing the Jury. Juries will be chosen in accordance with the Te-Moak Court Manual, Chapter 6-F.

(b) Discharge of Juror. If, after the proceedings begin, a juror becomes unable or disqualified to perform his or her duty, an alternate juror shall take the place of the discharged juror. If there is no alternate juror, the parties may agree to complete the action with the remaining jurors.

(c) Separation of the Jury. The Court shall instruct all jurors not to converse with or listen to anyone regarding the trial and shall tell them not to form or express an opinion on the case until they begin deliberations.

(d) Deliberation. Once the case is submitted, the jury shall deliberate in private.

(e) Things Taken by Jury. When deliberating, the jury may take with them the following: the Court's instructions; papers or things entered into evidence as exhibits; and any notes taken by the jurors themselves during trial.

(f) Additional Instructions. If the jury has a question after deliberation begins, the jury may request, in writing, additional instructions from the Court. Any interaction between the Court and the jury must be on the record, after notice to all the parties.

(g) Declaration of the Verdict. When a majority of the jurors in a civil case reach a verdict, the jury shall inform the Court. The jury shall be taken into the courtroom and the verdict shall be delivered, in writing, to the Court and read aloud by the Court. The Court shall ask the jury foreperson whether this is the verdict. Either party may have the jury polled to determine if such decision is, in fact, each juror's verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete, and the jury shall be dismissed.

(h) No Verdict. If the jury is discharged before rendering the verdict or is for any reason prevented from giving a verdict, the cause of action may be retried before the Court.

7-BB

Special Verdicts

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

7-CC**Instructions to the Jury**

- (a) Requests. At the close of evidence, or at a time as directed by the Court, any party may file written, requested instructions for the Court to give to the jury.
- (b) Instructions. Outside the presence of the jury, the Court will inform the parties of the instructions it intends to give the jury. Parties shall be given the opportunity to object to the instructions on the record and outside the hearing of the jury.

7-DD**Directed Verdict; Judgment as a Matter of Law; Judgment Notwithstanding the Verdict**

- (a) Motion for a Directed Verdict or Judgment as a Matter of Law. If a party believes that the other party has not met the burden of proof at trial, a motion for a directed verdict or judgment as a matter of law may be made any time before the case is submitted to the jury. The motion must specify the law and facts that entitle the party to the judgment.
- (b) Motion for Judgment Notwithstanding the Verdict. After a verdict, the parties have fifteen (15) days to move for an entry of a judgment notwithstanding the verdict, or for a new trial.

7-EE**Findings by the Court**

In cases tried without a jury, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Within ten (10) days of the entry of judgment, the Court may on its own motion or on the motion of any party, amend the findings and the judgment.

7-FF**Disability or Disqualification of a Judge**

- (a) Disability. If a trial or hearing has begun and the judge is unable to proceed, the case shall cease and be held until such time that the Te-Moak Council can research and retain a new judge (including substitution of the current Appellate Judge) as per the Te-Moak Constitution. The successor judge may proceed with the case upon certifying familiarity with the record and determining that the proceedings in the case may continue without prejudice to the parties. The successor judge may recall any witness.
- (b) Disqualification. Whenever a party alleges that the judge has a bias or prejudice, either against such party or in favor of any party, the judge shall determine, at his or her own discretion, whether to proceed or recuse themselves from the case. The allegation of bias must be filed as soon as practicable after the case has been assigned or after the alleged bias or prejudice is known.

7-GG**Judgment**

- (a) Definition. A judgment includes any final order. The Court in a civil action will announce a judgment either orally or in writing after completion of the trial or hearing. All judgments shall be reduced to writing, which shall include the basis for the decision.

(b) Judgment on Multiple Claims. An order or decision on some claims in a case will not end the action with respect to any other claims until all claims are finally decided. The appeal period shall not start to run until all claims are decided unless the Court makes a specific finding otherwise.

(c) Costs. The Court, at its discretion, may award costs as part of the final judgment.

(d) Attorney Fees. The Court may award reasonable attorney fees in a case if it reasonably appears that the case was pursued for purposes of harassment or that there was no reasonable expectation of success, or in the interests of justice.

In any action where the Tribe and/or any of its officers or employees are sued for a cause of action arising out of or performing a tribal function or duty, if judgment is rendered against the petitioner, the Court shall award reasonable attorney fees against the losing petitioner and in favor of the Tribe and/or its officers or employees.

(e) Entry of Judgment. A judgment is complete and shall be deemed entered for all purposes when it is signed by the judge and filed with the Court.

7-HH **Default**

(a) Entry of Default. When a respondent has failed to respond to a Petition and failed to appear in Court after receiving notice, the Court may enter a default on motion of the petitioner. A judgment by default will not be different in kind from, or exceed in amount, that specifically requested in the original demand for judgment.

(b) Judgment by Default. A Judgment by default may be entered by the Court if:

1. A party's claim is for money damages that can be ascertained or if there is other specific relief that the Court can grant;
2. The opposing party has been personally served according to these rules; and
3. The Court has personal jurisdiction over the opposing party. Otherwise, judgment by default can be entered by the Court only upon receipt of whatever evidence the Court deems necessary to establish the claim.

No judgment by default shall be entered against the Tribe.

(c) Setting Aside Default. The Court may, for good cause, set aside a default judgment.

7-II **Summary Judgment**

Any time after the start of an action, any party may move the Court for summary judgment on any or all of the issues. Summary judgment shall be if there is no genuine issue of fact and the

party is entitled to summary judgment as a matter of law. Motions for summary judgment may be supported by affidavits, discovery, or memoranda, which must be made available to opposing parties at least two(2) days prior to a summary judgment hearing.

7-JJ

New Trials; Amendments of Judgment

(a) Grounds; Time. Any party may move for a new trial on any or all of the issues and for any of the following reasons, by filing a motion within fifteen (15) days after the entry of the verdict or judgment:

1. An error or irregularity that prevented any party from receiving a fair trial;
2. Misconduct of the jury members;
3. Newly discovered evidence that ordinary due diligence could not have produced at trial;
4. Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice; or
5. Insufficient evidence to justify the judgment or the judgment it is contrary to law.

(b) Harmless Error. The Court will not grant a new trial on the basis of error or irregularity that was harmless, meaning the error did not affect substantial justice.

(c) Support for Motion. Parties may include memoranda or affidavits in support of their motions for a new trial, and a responsive pleading shall be allowed.

(d) Court Initiative. The Court may, on its own initiative, within fifteen (15) days after entry of judgment, order a new trial based on any permitted grounds, and shall specify the grounds for ordering a new trial.

(e) Motion To Alter or Amend Judgment. A motion to alter or amend a judgment shall be filed with the Court within fifteen (15) days after entry of the judgment.

7-KK

Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record, and errors arising from oversight or omission may be corrected by the Court at any time on its own initiative or on the motion of any party and after such notice, as the Court directs.

(b) Mistakes; Newly Discovered Evidence, etc. On motion, the Court may relieve a party from a final judgment or order for the following reasons:

1. Newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Chapter 7-JJ;

2. Fraud, misrepresentation, or other misconduct of the opposing party;
3. When the Summons in an action has not been served upon the respondent in accordance with Chapter 7-K, and a default judgment was entered;
4. The judgment is void;
5. The judgment was satisfied or discharged or it is no longer equitable that the judgment should apply; or
6. Any other reason justifying relief from the judgment.

(c) The motion for relief from judgment must be filed with the Court within a reasonable time after the judgment becomes final. The Court has the discretion to determine whether it was filed within a reasonable time. A motion under this rule does not affect the finality of a judgment or suspend its operation.

7-LL **Harmless Error**

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

7-MM **Execution**

(a) Types of Execution. Court orders allowing execution of a judgment shall consist of two types:

1. Attachment is used to seize property in possession of a judgment debtor.
2. Garnishment is used to seize property or wages in the possession of a person other than the judgment debtor.

(b) Service. Orders of attachment or garnishment shall be served in the same manner as the Summons and Petition, and proof of service shall be filed with the Court.

(c) Requests to Garnish. All requests for garnishment, other than for child support, may be granted at the Court's discretion.

(d) No Self-Help. Chapter 10-J of the Court Manual discourages self-help repossessions.

7-NN

Stay of Proceedings to Enforce a Judgment

(a) Stay upon Entry of Judgment. Proceedings to enforce a judgment may issue immediately upon the entry of the judgment unless the Court in its own discretion and on such conditions for the security of the adverse party as are proper otherwise directs.

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

7-00

Injunction/Restraining Order

(a) Temporary Restraining Order (Injunction). A temporary restraining order may be granted without notice to the other party only if it clearly appears from specific facts shown by affidavit or by verified Petition that immediate and irreparable injury, loss, or damage will result to the petitioner before the respondent can be heard.

(b) Duration of Temporary Restraining Order. Every temporary restraining order granted without notice shall be filed immediately with the Court and shall expire by its own terms within such time after entry, not to exceed ten (10) days unless the order is extended for good cause, or the other party agrees to extend it. In case a temporary restraining order is granted without notice, a hearing with all parties present shall be held as soon as possible. On notice to the party who obtained the temporary restraining order, the other party may appear and move for its dissolution.

(c) Security. The Court may require an applicant for an injunction to provide money security, in such sum as the Court deems proper, for the payment of such costs and damages as may be sustained by a party who is found to have been wrongfully enjoined.

(d) Hearing Temporary Restraining Order. Within ten (10) days, the Court shall hold a hearing where both sides shall be given an opportunity to be heard on whether to issue a longer-term or permanent restraining order (injunction).

(e) Form and Scope of Restraining Order/Injunction; Service. Every order granting an injunction and every restraining order (1) shall state the reasons why it was issued; (2) shall be specific; (3) shall describe in reasonable detail the acts to be restrained or required; and (4) is binding only upon the parties to the action, including their officers, agents, servants, employees, advocates and attorneys, and any persons in active concert or participation with the parties, so long as the parties receive actual notice of the order by personal service or otherwise.

7-PP**Appeal**

All appeals from the Te-Moak Tribal Court shall be heard by the Tribal Appellate Court in accordance with the provisions of the Te-Moak Law and Order Code concerning appeals.

EXHIBIT 9

OFFICIAL

ORDINANCE OF THE
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

OFFICIAL

ORDINANCE NO. 87-ORD-TM-02

TITLE I GENERAL PROVISIONS

BE IT ENACTED BY THE TRIBAL COUNCIL OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA AS FOLLOWS:

That in accordance with Article 4, Section 3 (j) and (n) of the Constitution of the Te-Moak Tribe, as amended on August 26, 1982, as organized under the Indian Reorganization Act of June 18, 1934, (48 Stat.) as amended by the Act of June 15, 1935, (49 Stat. 378).

TITLE I. GENERAL PROVISIONS
CHAPTER 1. PRELIMINARY PROVISIONS

1-1-1 CONSTITUTIONAL AUTHORITY

This Law and Order Code is planned to be adopted Chapter at a time, to insure an orderly transition from our present Ordinance format to this codified Law and Order Code. This Law and Order Code is being adopted pursuant to the authority vested in the Te-Moak Tribal Council under Article 4, Section 3 (n) of the Te-Moak Constitution as amended and approved August 26, 1982.

1-1-2 NAME OF CODE

This Law and Order Code shall be known as the Law and Order Code of the Te-Moak Tribes of Western Shoshone Indians of Nevada. Sub-codes and rules included herein may be cited by the name given in the sub-code or rule heading.

1-1-3 PRIOR INCONSISTENT ORDINANCES REPEALED

Any and all Ordinances and Resolutions of the Te-Moak Tribe or Bands which in any way conflict with the provisions of this Law and Order Code are hereby repealed to the extent that they are inconsistent with or conflict with, or are contrary to the spirit and/or purpose of this Law and Order Code.

1-1-4 C.F.R. NO LONGER APPLICABLE

Any and all provisions of the Code of Federal Regulations, Title 25, Part II, as presently constituted or hereafter constituted which deal with subject covered in this Law and Order Code or the purpose and/or spirit of this Law and Order Code are declared to be no longer applicable to the Te-Moak Tribe Reservations and Colonies.

1-1-5 AMENDMENT OF LAW AND ORDER CODE

This Law and Order Code may be amended, additions made hereto, or deletions made herefrom in the manner provided for the adoption of Tribal Ordinances. Amendments and additions to this Law and Order Code shall become a part

ENTERED

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thereof, for all purposes and shall be codified and incorporated herein, in a manner consistent with the numbering and organization hereof.

TITLE I GENERAL PROVISIONS
CHAPTER 2

1-2-1 JURISDICTION

It is hereby declared as a matter of Tribal Policy and legislative determination, that public interests and the interest of the Te-Moak Tribe demand that the Tribe provide itself, it's members, and other person (s) living within the territorial jurisdiction of the Tribe as set forth in Article 2 of the Constitution of the Te-Moak Tribes of Western Shoshone Indians of Nevada with an effective means to redress in both civil (as defined in Section 3-3-4 of the Te-Moak Tribal Court Ordinance) and criminal cases (as defined in Section 3-3-5 of the Te-Moak Tribal Court Ordinance) against Te-Moak Tribal Members and Non-Indian Members who through either their residence, presence, business, dealings, actions or failures to act or other significant minimum contacts with our Colonies and Reservations and/or it's residents commit criminal offenses against the Tribe or Reservation incur civil obligations to persons or entitled to the Tribe's protection. This action is deemed necessary as a result of the confusion and conflicts caused by the increased contacts and interaction between which the Tribe has not previously elected to exercise jurisdiction. The jurisdictional provisions of this Law and Order Code, to insure maximum protection for the Tribe, its members' and other residents of the South Fork Reservation, Elko Indian Colony, Battle Mountain Indian Colony and Wells Indian Colony, should be applied equally to all persons, members and non-members alike.

1-2-2 TERRITORIAL JURISDICTION

- (1) The jurisdiction of the Courts of the Te-Moak Tribe shall extend to the territory within the original confines of the South Fork Indian Reservation set forth by the authority Act of May 9, 1935 purchases of May 29, 1937, March 31, 1938, November 14, 1938, December 10, 1938, March 27, 1943 and June 14, 1951. Battle Mountain Colony by Executive Order # 2639 of June 18, 1917 and Public Law 90-72 (81 STAT. 173), August 21, 1967. Elko Indian Colony by Executive Order #2824 of March 23, 1918 and Public Law 71-581 (46 STAT. 1046) of July 10, 1931 and Wells Indian Colony by Public Law 95-133 of October 15, 1977 and to such other lands without such boundaries as have been or may hereafter be added to or held in trust for the Tribe under any laws of the United States or otherwise.
- (2) The jurisdiction of the Courts of the Te-Moak Tribe shall extend beyond the territorial limitation set forth above, to effectuate the Jurisdictional provisions set forth below, to the greatest extent permissible by law.

1-2-3 PERSONAL JURISDICTION

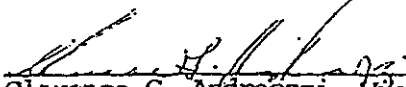
- (1) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, or corporation.

1-2-4 JURISDICTION OVER PROPERTY

Subject to any contrary provisions, exceptions, or limitations contained in either Federal Laws and Regulations, the Tribal Constitution, or as expressly stated elsewhere in this Law and Order Code, the Courts of the Te-Moak Tribe shall have jurisdiction over any real or personal property located on the Reservation or Colonies, to determine the ownership of such property to the satisfaction of a claim for which the owner of the property may be liable.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Chairperson of the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada do hereby certify that the Te-Moak Council is composed of 9 members of whom 5 constituting a quorum were present at a duly held meeting on the 15th day of July, 1987 and that the foregoing ordinance was duly enacted at such meeting by an affirmative vote of 4 FOR, 0 AGAINST, 0 ABSTENTIONS, pursuant to the authority contained under Article 4, Section 3(j) and (n) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.


Clarence G. Andreozzi, Vice-Chairperson
Te-Moak Western Shoshone Council

ATTEST:

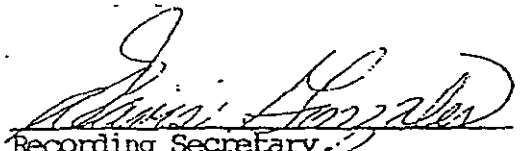

Recording Secretary
Te-Moak Western Shoshone Council

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TITLE XVI TE-MOAK TRIBAL ENROLLMENT PROCEDURE CODE

TITLE 1. GENERAL PROVISIONS

PREAMBLE

This Code of Laws for the Te-Moak Tribe of Western Nevada is established for the purpose of strengthening Tribal self-government and providing for the protection of people and property on the Reservation. Adoption of this Code is an exercise of the inherent sovereignty of the Te-Moak Tribe of Western Nevada, and is undertaken by the Te-Moak Tribal Council pursuant to its constitutional authority.

CHAPTER 1. PRELIMINARY PROVISIONS

Section 1-1-1. Constitutional Authority.

This Code is adopted pursuant to the authority vested in the Tribal Council under Article __, Section __ of the Constitution of the Te-Moak Tribe of Western Nevada.

Section 1-1-2. Name of Code.

This Code shall be known as the Te-Moak Tribal Code and may be referred to as "the Code".

Section 1-1-3. Prior Inconsistent Ordinances Repealed.

Any and all ordinances and resolutions of the Tribal Council which conflict in any way with the provisions of this Code are hereby repealed to the extent of their inconsistency herewith.

Section 1-1-4. Amendment of Law and Order Code.

This Code may be amended, additions made hereto or deletions made herefrom in the manner provided for the adoption of Tribal Council ordinances. Amendments and additions to this Code shall become a part thereof for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering organization hereof. Each amendment to this Code as codified for inclusion in an amended code title shall be stamped or otherwise marked with its effective date as provided by the Tribal Ordinance enacting the amendment. The number of the ordinance enacting the amendment shall likewise be placed in parenthesis at the close of the amendment as it appears in the amended Code title.

CHAPTER 2. ESTABLISHMENT OF TE-MOAK TRIBAL COURT AS TRIAL-LEVEL COURT; JURISDICTION OF COURT

Section 1-2-1. Trial Court Established

- (1) Pursuant to Article ___ of the Constitution and Bylaws of the Te-Moak Tribe of Western Nevada, there is hereby established the Te-Moak Tribal Court, the trial-level court, as a court of record.
- (2) There is hereby established as part of the Tribal Court a Youth Court Division, which may be referred to as the Tribal Youth Court. The Youth Court Division shall handle all matters as set forth in the Tribal Youth Code.

Section 1-2-2. Composition of the Court

The Court shall consist of one (1) Chief Judge, and Associate Judges in such number as determined by the Tribal Council, whose duties shall be regular and permanent. The Judges shall be appointed by the Tribal Council or elected by tribal membership. The Tribal Council also may appoint special Judges as required.

Section 1-2-3. Records of the Court

- (1) The Court shall keep a record of all proceedings of the Court, showing the following:
 - (a) The title of the case;
 - (b) the names and addresses of the parties, attorneys and witnesses;
 - (c) the substance of the complaint;
 - (d) the dates of all hearings or trials;
 - (e) the name of the judge;
 - (f) the findings of the Court or verdict of the jury and judgment;
 - (g) the preservation of testimony for perpetual memory by electronic recording, or otherwise, together with any other facts or circumstances deemed of importance to the case.
- (2) The files and records of the Courts of the Tribe shall be open for public inspection, except that the files and records of adoptions, incompetency proceedings, and the Tribal Juvenile Court proceedings shall not be open to public inspection and may be inspected only with prior

specific judicial authorization. In criminal cases, upon inquiry by members of the public, the Court shall furnish the name of the offender, the offense, and the sentence imposed.

Section 1-2-4. Rules of Court

The Chief Judge may prescribe written rules of court, consistent with the provisions of this Code, including rules establishing the time and place of court sessions. The rules shall be approved by the Tribal Council before becoming effective.

Section 1-2-5. Jurisdiction - Tribal Policy

It is hereby declared as a matter of Tribal Policy, that the public interest and the interests of the Te-Moak Tribe of Western Nevada demand that the Tribe provide itself, its members, and other persons living within the territorial jurisdiction of the Tribe as set forth in Section 1-2-6 of this Code with an effective means of redress in civil proceedings against members and non-Tribal members who through either their residence, presence, business dealings, other actions or failures to act, or other significant minimum contacts with this Reservation and/or its residents incur civil obligations to the Tribe or to persons or entities entitled to the Tribe's protection, or through criminal prosecution of Indians committing offenses against the Tribe within its territorial jurisdiction. The jurisdictional provisions of this Code, to insure maximum protection for the Tribe, its members and other residents of the Reservation, shall be applied equally to all persons, Indians and non-Indians alike to the extent not prohibited by federal law.

Section 1-2-6. Territorial Jurisdiction

The jurisdiction of the Courts of the Te-Moak Tribe of Western Nevada shall extend to the territory within the exterior boundaries of the as set forth in the treaty of _____ to such other lands without these boundaries as may have been or may hereafter be added to the Reservation or held in trust for the Tribe under any law of the United States or otherwise.

Section 1-2-7. Personal Jurisdiction

- (1) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association or corporation.
- (2) Subject to any limitations expressly stated elsewhere in this Code, the Courts of the Tribe shall have civil jurisdiction over the following persons:
 - (a) Any person residing, located or present within the

Reservation.

- (b) Any person who transacts, conducts, or performs any business or activity within the Reservation, either in person or by an agent or representative, for any civil cause of action in contract or in quasi-contract or by promissory estoppel or alleging fraud.
 - (c) Any person who owns, uses or possesses any property within the Reservation, for any civil cause of action arising from such ownership, use or possession.
 - (d) Any person who commits a tortious act or engages in tortious conduct within the Reservation, either in person or by agent or representative, for any civil cause of action arising from such act or conduct.
- (3) Any Indian person who commits a criminal offense prohibited by this Code or other ordinance of the Tribe, by his own conduct or the conduct of another for which he is legally accountable, if:
- (a) The conduct occurs either wholly or partly within the Reservation; or
 - (b) The conduct which occurs outside the Reservation constitutes an attempt, solicitation, or conspiracy to commit any offense within the Reservation; or
 - (c) The conduct which occurs within the Reservation constitutes an attempt, solicitation or conspiracy to commit in another jurisdiction an offense prohibited by this Code and such other jurisdiction.
- (4) None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

Section 1-2-8. Jurisdiction Over Property

Subject to any contrary provision, exceptions or limitations contained in either federal laws and regulation, the Constitution and Bylaws of the Te-Moak Tribe of Western Nevada, or as expressly stated elsewhere in this Code, the Te-Moak Tribal Courts shall have jurisdiction over any real or personal property located on the Reservation to determine the ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property may be liable.

Section 1-2-9. General Subject Matter Jurisdiction - Expanded

The Te-Moak Tribal Courts shall have such subject matter jurisdiction as is expressly conferred by Article __, Constitution and Bylaws of the Te-Moak Tribe of Western Nevada and shall have the following additional and expanded jurisdiction pursuant to Article __, Section __, thereof, to wit:

- (1) Indian Child Welfare Act proceedings as defined at 25 U.S.C. Sec. 1901, et seq, or successor statute;
- (2) Civil disputes and causes of action of any kind whatsoever;

Section 1-2-10. Jurisdiction Over Suits Commenced By the Tribe

Notwithstanding any other provision of this Code, the Tribal Court shall have jurisdiction of all civil actions commenced by the Te-Moak Tribe, or by any agency or officer thereof expressly authorized to file suit by the Tribal Council.

Section 1-2-11. Tribe Immune From Suit

The Te-Moak Tribe of Western Nevada shall be immune from suit. Nothing in the Code shall be construed as consent of the Tribe to be sued.

Section 1-2-12. Suits Against Tribal Officials

The Court shall have jurisdiction over all suits in which Tribal officials or employees are defendants, except habeas corpus proceedings authorized by 25 U.S.C. Sec. 1303.

- (1) No elected official or judge of the Tribe shall be subject to a suit for money damages for any action taken in the course of his/her official duties, or in the reasonable belief that such action was within the scope of his/her official duties.
- (2) No employee of the Tribe shall be subject to suit for money damages for any action taken in the course of his/her official duties, or in the reasonable belief that such action was within the scope of his/her official duties, unless it is clearly established that such action was taken with malicious intent and in bad faith.

Section 1-2-13. Review of Administrative Decisions

- (1) The Court shall have exclusive jurisdiction over all appeals from actions by agencies or offices of the Tribe, where such appeals are authorized by this Code.
- (2) The Tribe hereby waives their immunity from suit in Tribal Court for appeals under subsection (1). Relief

against the Tribe shall be limited to that specified in the provisions of the Code authorizing the appeal. In no event shall the Tribe be liable for money damages, except that the Tribal Court may order refunds of taxes or fees erroneously collected where such relief is specifically authorized by the provision of the Code under which the appeal is taken.

CHAPTER 3. TE-MOAK TRIBAL SUPREME APPELLATE COURT

Section 1-3-1. Appellate Court Established.

Pursuant to Article 8, Section 1, of the Constitution of the Te-Moak Tribe of Western Nevada, there is hereby created a Te-Moak Tribal Supreme Appellate Court.

Section 1-3-2. Jurisdiction of Appellate Court.

The jurisdiction of the Appellate Court shall extend to all appeals from final orders and judgments of the Tribal Court. The Appellate Court may review all determinations of the Tribal Court on matters of law. The Appellate Court shall not set aside any Tribal Court factual determinations unless there is substantial evidence contradicting any such determination.

Section 1-3-3. Composition of Appellate Court.

- (1) The Tribal Council shall ^{appoint} persons to serve as Appellate Judges consistent with Article 8 Section 4 of the Constitution. No trial judge who has participated at the trial level in the case under appeal shall be appointed to sit on the appeals panel having responsibility for appellate review of such case.
- (2) The Tribal Council may through resolution, enter into any appropriate intertribal court of appeals system. Any additional intertribal appellate court rules may be adopted by reference.

Section 1-3-4. Records of Appellate Court.

The Appellate Court shall keep a record of all proceedings of the Court, showing the title of the case, the name and addresses of all parties and attorneys, the briefs, the date of any oral arguments, the names of the justices who heard and decided the case, and the judgment, together with any other facts and circumstances deemed of importance to the case. With the exceptions noted in Section 1-2-3 of this Title, all decisions and opinions of the Court shall be published in a format that shall be available to the public at the Tribal Office ^{Court Bldg.}

Section 1-3-5. Right of Appeal.

- (1) Criminal Cases: The defendant in a criminal case shall have an appeal as of right from a judgment of conviction. Appeals in criminal cases shall be taken as provided in Section 1-3-6.
- (2) Civil Cases: Any party who is aggrieved by a final order or judgment of the Tribal Court may file a Notice of

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Appeal requesting appellate review. Appeals in civil cases shall be taken as provided in Section 1-3-7.

- (3) Unless the Court grants a stay of an order pursuant to Section 1-3-6(5) or Section 1-3-7(5) of this Title, all final orders of the Court shall be carried out while appeals are pending. An application for a stay of an order shall temporarily stay the order.

Section 1-3-6. Criminal Appeals Procedure.

- (1) **Timeliness:** A written Notice of Appeal must be filed with the Clerk of the Court within thirty (30) days from the date of judgment. An extension may be granted upon written request stating good cause for such extension. The granting of any such extension is at the discretion of the Court.
- (2) **Bond:** The Court shall set the amount of a bond to be filed with the Notice of Appeal. The maximum amount of the bond is the aggregate amount for the offense or offenses for which the defendant is appealing.
- (3) **Notice of Appeal:** The Notice of Appeal shall specify the party or parties taking the appeal, shall designate the judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. The Clerk of Court shall mail a copy of the Notice of Appeal to all parties taking the appeal.
- (4) **Designation of Parties:** The party taking the appeal is the appellant. All other parties are appellees.
- (5) **Release on Bond Pending Appeal:** In criminal cases, the defendant may be continued on release or be released on bail, as provided by Title II of this Code.

Section 1-3-7. Civil Appeals Procedure.

- (1) **Timeliness:** A party to a civil case may petition for review. The petition for review must be taken within thirty (30) days from the date of the entry of the final order or judgment from which the appeal is taken. The appellant must file such petition with the Clerk of the Court with a docket fee and any bond required pursuant to this Section. An extension may be granted upon written request stating good cause for such extension. The granting of such extension is at the discretion of the Court.
- (2) **Contents of Petition for Review:** The petition for review shall specify the parties taking the appeal, shall

- designate the final order or judgment, or part appealed from, and shall contain a short statement explaining why the petition should be granted. The Clerk of the Court shall mail a copy of the petition to all parties other than the petitioner. Other parties shall have thirty (30) days to respond to the petition for review. The Appellant Court may grant or deny the petition.
- (3) **Designation of Parties:** The party taking the appeal is the appellant. All other parties are appellees.
- (4) **Docket Fee and Bond:** The petition for review shall be accompanied by a docket fee of twenty (\$20) dollars and a bond to be set by the Court. The maximum amount of the bond is five hundred (\$500) dollars. The Court may waive or reduce the bond and docket fee if it finds that the appellant is indigent.
- (5) **Stay on Appeal:** In civil cases, the petitioner may request the Trial Court to stay the judgment pending action on the petition and on the appeal if the petition is granted. Either party may request the Tribal Court to grant or stay an injunction pending appeal. A stay may be granted in all cases in which it is requested unless manifest injustice would result therefrom. However, such stay may be conditioned on posting of a bond. The appellant's bond shall be sufficient to cover the damages awarded by the Tribal Court together with interest. The cash or bond may be deposited at or after the time the petition is filed. The stay shall be effective when the deposit of cash or bond is approved by the Tribal Court. The appellant may petition the Appellant Court to review any decision of the Tribal Court under this Section.

Section 1-3-8. Judgment Against Surety.

Any surety to a bond thereby submits themselves to the jurisdiction of the Tribal Court, and irrevocable appoints the Clerk of the Court as their agent upon whom any papers affecting their liability on the bond may be served. The liability of a surety may be enforced on motion without the necessity of an independent action. The motion and such notice of motion as the Court prescribes may be served on the Clerk of Court. The Clerk of Court shall immediately mail copies to the surety at their last known address.

Section 1-3-9. Record on Appeal.

- (1) Within five (5) days after a notice of appeal is filed in a criminal case or a petition for review is filed in a civil case, the Clerk of the Court shall certify and file with the Appellate Court all papers comprising the record

of the case.

- (2) If there is an error in the record, either party or the Court may direct that the error be corrected, and if necessary that a supplemental record be certified and transmitted.

Section 1-3-10. Briefs and Memoranda.

- (1) Within thirty (30) days after the notice of appeal is filed, or a petition for review is granted, or within such other time as the Court allows, the appellant may file a written brief, memorandum or statement in support of their appeal. An original and one (1) copy, registered or certified mail, return receipt requested, to each appellee. The return receipt shall then be filed with the Clerk of Court.
- (2) The appellee shall have fifteen (15) days after receipt of the appellant's brief, memorandum or statement, or such other time as the Appellate Court allows, within which to file an answer brief, memorandum or statement if so desired. An original and one (1) copy for each appellant shall be filed with the clerk who shall mail one (1) copy, registered or certified mail, return receipt requested, to each appellant. The return receipt shall be filed with the clerk.

Section 1-3-11. Oral Argument.

The Appellate Court may decide all cases without oral arguments, unless either party request oral argument or if the Appellate Court decides on its own motion to hear oral arguments.

Section 1-3-12. Appellate Court Rules.

- (1) The Judges of the Appellate Court shall prescribe all necessary rules concerning the operation of the Appellate Court and the time and place when the Court shall convene.
- (2) Pursuant to Section 1-3-3(2) of this Title, the Tribal Council may suspend the rules of the Te-Moak Tribal Supreme Appellate Court and adopt by reference any rules of an intertribal appellate court system.

Section 1-4-4. Removal.

No Judge of the Te-Moak Tribal Court shall be removed from office during his/her term except as provided in Article 8, Section 6 of the Constitution Te-Moak Tribe of Western Nevada.

Section 1-4-5. Powers and Duties.

- (1) Judges shall administer justice and discharge all duties imposed upon them by law and shall hear and decide matters of a judicial nature upon duly filed complaints alleging legal disputes or controversies falling within the Court's jurisdiction, and enter judgments and orders disposing of such matters. In the absence of the Court Clerk, a Judge may perform the Clerk's duties in addition to his or her own and may receive cash bail or bonds whenever a Clerk or other authorized person is not available.
- (2) The Chief Judge shall:
 - (a) Supervise the administration of the Court.
 - (b) Supervise Court personnel, including, but not limited to Associates Judges, Court Clerks, Court Administrators and Probation and Parole Officers.
 - (b) Assign cases and manage the Court's calendar and business.
 - (c) Designate an Associate Judge to act as Chief Judge in his or her absence.
- (3) All Judges of the Tribal Court shall conform their conduct to the Code of Judicial Conduct as set out in this Title.
- (4) Subject to his/her obligation to accord all parties due process of law, every Tribal Judge has the power to:
 - (a) Preserve and enforce order in his/her immediate presence, and in proceedings before him/her, when engaged in the performance of official duty;
 - (b) Compel obedience to lawful orders by legal process;
 - (c) Compel the attendance of persons to testify in proceedings before him/her as provided by law and upon duly filed subpoena by any party to such proceeding;
 - (d) Administer oaths to persons in proceedings before

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him/her and in any other case where such shall be necessary in the exercise of his/her powers and duties; and

- (e) Punish for contempt to assure the effectual exercise of these powers.

Section 1-4-6. Disqualification.

- (1) A Judge shall be disqualified from hearing any matter if:
 - (a) His/her impartiality might reasonably be questioned because of personal bias or prejudice;
 - (b) He/she has a direct interest (monetary, proprietary or political) in the outcome of the case;
 - (c) He/she is related by blood to the fourth degree (first cousin or closer) to a party or trial witness;
 - (d) He/she has acted or is acting as a lawyer or lay counselor to any party or witness in the case.
 - (2) The Chief Judge must determine all disqualifications in the Tribal Court, except in cases where an affidavit has been filed against the Chief Judge, in which case, an Associate Judge shall determine the matter.
 - (3) Any party to a legal proceeding may request a change of assignment of Judges to hear the proceeding by filing a written Affidavit giving sufficient, reasonable grounds why the Judge assigned should or should not hear the case. The Chief Judge, or if the affidavit concerns the Chief Judge, another judge shall rule on the sufficiency of the affidavit. If the affidavit is sufficient, the Judge who is the subject of the affidavit shall be disqualified from further participation in the case.
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CHAPTER 5. COURT ADMINISTRATION

Section 1-5-1. Office of Clerk.

- (1) There shall be a Clerk of the Court appointed by the Chief Judge.
- (2) Additional clerks for the Te-Moak Tribal Court may be appointed from time-to-time by the Chief Judge upon a showing of need and subject to available funds.
- (3) The Clerk of the Court, once appointed shall remain in office at the end of the term of the Chief Judge who appointed them, or upon his/her removal, until such time as they shall have been notified in writing by the Chief Judge then in office of their termination. Nothing in this Code shall prohibit the Chief Judge from offering an employment contract for a period not to exceed the remainder of the appointing Justice's term with and for any clerk of the court who has first served to the Chief Judge's satisfaction for a period of not less than six (6) months provided, that no such contract shall be effective unless ratified by the Tribal Council.

Section 1-5-2. Duties of Clerks.

- (1) Clerks of the Tribal Courts shall have the following duties:
 - (a) to supervise and keep all records, files, dockets or other records required to be kept by this Code, by rule of the Court, Tribal Resolution, or as otherwise established;
 - (b) to keep a written record of all proceedings of the Court;

- (c) to administer oaths;
 - (d) to collect and account for all fines, bail or bond money, fees or other charges which cause money to come to the Court, to deposit and account for all such money as authorized by law, provided that the Court may require private litigants to pay the cost of transcription of Court proceedings in preparing the record for the appeal in which the matter in controversy exceeds \$500.00 and the party seeking appellate review is determined by the Court not to be indigent;
 - (e) to assist the Court in any action required to facilitate the performance of its duties, to aid the police or private citizens in their dealings with the Court, and may render advice and assistance to individual members of the Tribe or their counsel in the drafting of documents incidental to proceedings in the Courts.
- (2) All Clerks shall be bonded, at Tribal expense, in amounts determined by the Tribal Council, to secure the honest performance of their duties.

Section 1-5-3. Oath of Clerks.

- (1) Every Clerk shall take the following oath upon assuming office:

I, _____, having been appointed Clerk of the Tribal (Juvenile) Court, do solemnly swear (affirm) that I will truly, faithfully, honestly, and impartially discharge all of the duties of my office to the best of my ability and understanding.

- (2) This oath shall be administered by a Judge of the Tribal Court.

Section 1-5-4. Court Administrator.

The Tribal Council may, at such time as it appears reasonably necessary for the efficient functioning of the Court, appoint a Court Administrator whose job it will be to aid the Chief Judge in administering the Courts, the scheduling of cases and processing of papers for scheduled cases, and to perform such other duties as the Chief Judge directs to assure the orderly and efficient operation of the Tribal Courts.

Section 1-5-5. Probation and Parole Officers.

(1) The Tribal Council shall appoint one or more persons to be Probation and Parole Officers and shall determine the qualifications, terms of employment and compensation of such officers.

(2) Probation and Parole Officers, subject to the supervision of the Chief Judge, shall have the responsibility of assuring the faithful performance of the probation or parole agreements by persons subject thereto, counseling such persons and their families, preparing pre-sentence or other reports as requested by the Tribal Judge, and performing such other duties as may be directed by the Tribal Judge or otherwise required by law.

(3) A Probation and Parole Officer shall have the authority of a police officer to make arrests for violation of probation or parole agreements.

CHAPTER 6. ATTORNEYS AND LAY COUNSELORS

Section 1-6-1. Right to Representation.

Any person appearing as a party in a proceeding before the Te-Moak Tribal Court has the right to be represented by an attorney or lay counselor of his/her choice provided that:

- (1) The Tribe has no obligation to pay for such attorney or lay counselor;
- (2) Any attorney or lay counselor must first be duly admitted to practice in the Te-Moak Tribal Courts.

Section 1-6-2. Eligibility for Admission: Attorneys.

- (1) Any attorney who is an active member in good standing of any State Bar or the Bar of the District of Columbia shall be entitled to automatic admission to practice before the Courts of the Te-Moak Tribe.
- (2) Any attorney who has been disbarred shall not be eligible to practice before the Courts of the Te-Moak Tribe.
- (3) Any attorney who is inactive may be eligible to practice before the Courts of The Te-Moak Tribe upon written request and approval by the Tribal Council.

Section 1-6-3. Procedure for Admission.

- (1) the Clerk shall prepare and maintain on file blank copies of Applications for Admission to practice before the Te-Moak Tribal Courts. The application shall provide

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simple written instructions and shall set out in full the oath set out in this Code along with instructions to sign the application and the oath in the presence of the Clerk of Court.

- (2) Any attorney desiring to be admitted to practice before the Te-Moak Tribal Court shall complete and submit an Application for Admission certifying under oath:

- (a) that he/she meets the requirements of Section 1-6-2 of this Code, and appending thereto a current Bar admission card or letter from a State Bar Association or the District of Columbia showing admission to and good standing therein.
- (b) that he/she has taken the required oath set out in the application.

- (3) An admission fee of \$35.00 shall be tendered with the application, subject to return if the application is denied. The fee shall be waived for attorneys employed by the Tribe. This is an annual fee to be paid each year by the Attorney.

- (4) Upon receipt of an Application for Admission to practice before the Courts of the Te-Moak Tribe, the Chief Judge shall review the application and may, but need not, investigate the truth of the matters contained therein. If the applicant meets the qualifications set forth herein, the Chief Judge shall cause a certificate to be issued evidencing the admission of the attorney to practice before the Courts of the Te-Moak Tribe.

- (5) Any person denied admission shall have a right to appeal, in writing, directly to the Tribal Supreme Court which may conduct such inquiry or proceedings on the matter as it deems appropriate.

Section 1-6-4. Eligibility for Admission: Lay Counselors.

To be eligible to serve as a lay counselor, a person must:

- (1) Be at least twenty-one (21) years old;
- (2) Not be convicted of a Class A crime under this Code or felony under any other jurisdiction;
- (3) Not have been dishonorably discharged from the Armed Services;
- (4) Be a member of a federally recognized tribe;

- (5) Demonstrate to the Chief Judge's satisfaction sufficient knowledge and understanding of the Te-Moak Tribal Code;
- (6) Not be an official candidate for or current member of the Tribal Council.

Section 1-6-5. Admission Procedure for Lay Counselors.

Any person desiring to be admitted to practice as a lay counselor shall complete and submit an application for admission certifying under oath that he/she meets the requirements of Section 1-6-4 and has taken the required oath and paid the application fee.

Section 1-6-6. Disbarment and Discipline.

- (1) Whenever any attorney admitted to practice before the Te-Moak Tribal Courts has been disbarred or suspended from the practice of law in any State to which reference for admission to practice was made as a condition to obtaining admission to practice before the Tribal Courts, the Chief Judge shall immediately send notice to the attorney's last known address that the attorney shall be suspended from practice before the Courts of the Tribe for an indefinite period unless the attorney shall appear or otherwise answer within thirty (30) days showing good cause why such order should not be entered.
- (2) The Chief Judge shall draft rules and procedures governing judicial discipline of or sanctions for attorneys and lay counsel. These rules shall govern how and when such sanctions may be applied by the Court in the event of outrageous conduct, repeated contempt of court or unethical conduct by such counselors or attorneys in cases before the Te-Moak Tribal Court. Such rules and procedures governing sanctions shall be approved by the Tribal Council.
- (3) Any lay counselor may be suspended from further appearances for misconduct, insubordinate ability or improper behavior by any Judge upon the same conditions of notice and hearing provided attorneys.

Section 1-6-7. Standards of Conduct for Attorneys and Lay Counsel.

Every attorney and lay counselor admitted to practice before the Courts of the Tribe shall conform his/her conduct in every respect to the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the American Bar Association.

Section 1-6-8. Oath of Attorneys and Lay Counsel.

Upon applying for admission to practice as provided herein, an attorney or lay counselor shall take the following oath by subscribing his signature to such oath on the application:

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

CHAPTER 7. JURORS.

Section 1-7-1. Eligibility for Jury Duty.

- (1) Any enrolled member of the Te-Moak Tribe of ~~Western~~ Nevada between the ages of 21 and 70, who has not been convicted of a felony or a Class A offense under this Code shall be eligible to be a juror. Judges, other officers or employees of the Court, attorneys and lay counselors shall not be eligible to be jurors.
- (2) The Chief Judge may by rule adopt procedures whereby non-enrolled Indians and non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved.

Section 1-7-2. Jury Lists.

Each year, the Clerk of Courts shall prepare a list of eligible jurors, which list shall contain not less than fifty (50) names and which shall contain the names of persons from each band Reservation district, prorated as nearly as possible according to the relative population of the communities and districts.

Section 1-7-3. Jury Trials.

- (1) The Clerk of Courts shall subpoena not less than twenty

(20) persons from the list of eligible jurors to appear and be available to serve as jurors whenever a jury trial is scheduled in a civil or criminal matter.

(2) The selection from the list of eligible jurors shall be by lot or some other means of random, impartial selection.

(3) Selection of jurors to hear the case shall be accomplished as provided in the Rules of Civil and Criminal Procedure elsewhere in this Code.

Section 1-7-4. Power to Excuse Jurors.

Only the Judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror, and may do so on good cause shown by the person subpoenaed.

Section 1-7-5. Compensation of Jurors.

Each juror who serves on a jury may be entitled to receive a fee for daily service. The fee may be established by Tribal Council resolution or by rule of the Court, consistent with funds available in the Court Fines Account.

CHAPTER 8. CONTEMPT

Section 1-8-1. Contempt of Court; Defined.

The following acts or failures to act may serve as the basis for finding an individual or other entity in contempt of court:

- (1) Disorderly, contemptuous, or insulting behavior toward a Judge while holding Court, which tends to interrupt the course of the proceedings or undermines the dignity of the Court.
- (2) A breach of the peace, or loud boisterous conduct which tends to interrupt the course of a judicial proceeding.
- (3) Deceit, or abuse of process or proceedings of the Court by a party or counselor to a judicial proceeding.
- (4) Disobedience to a lawful judgment, order or process of the Court.
- (5) Assuming to be an officer, spokesman or other official of the Court and acting as such without authority.
- (6) Rescuing or taking any person or property from the Court

or an officer acting under Court order, contrary to the order of the Court.

- (7) Unlawfully detaining or otherwise interfering with a witness or party to an action while such person is going to or from a Court proceeding or attending Court.
- (8) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.
- (9) Any other interference with the process, proceeding, or dignity of the Court or a Judge of the Court while in the performance of his/her official duties occurring while any Court hearing is in actual session.

Section 1-8-2. Civil Contempt.

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

Section 1-8-3. 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, by the maximum fine and jail term allowed for a Class A offense.

Section 1-8-4. Contempt Procedure.

- (1) A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and such may be adjudged and punished summarily.
- (2) All other contempt shall be determined at a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

CHAPTER 9. SUBPOENAS AND SERVICE OF OTHER PAPERS.

Section 1-9-1. Issuance of Subpoenas.

- (1) The Clerk of Court shall issue subpoenas to compel the attendance of witnesses, jurors or such other persons as a Judge may direct for a trial, hearing or other proceeding before a Court of the Te-Moak Tribe.
- (2) In a criminal case, the complaining witness and all witnesses for the Te-Moak Tribe may be subpoenaed by the prosecution or defense to appear at the date and time set for trial or a reasonable time before such time. The defendant shall have the right to have witnesses subpoenaed to appear in his/her behalf by notifying the Clerk of the Court of the names and addresses of such witnesses not less than ten (10) days prior to the scheduled trial date.

Section 1-9-2. Services of Subpoenas; Return of Service.

- (1) Subpoenas in criminal cases shall be served by a tribal law enforcement officer, or other person designated by the Chief Judge.
- (2) Subpoenas in non-criminal cases may also be served by any tribal member over 18 years of age, not a party to the action, who is a resident of the reservation.
- (3) The person serving a subpoena shall endorse upon the copy served his name, title, and the place, date, and time of service and if possible, shall secure a written acknowledgement of receipt of service from the person served.
- (4) The person serving a subpoena shall provide a written return to the Clerk stating the name of the case, the name of the person served, the place, date and time of service and shall subscribe his/her name thereto under penalty of perjury for the intentional making of a false return.

CHAPTER 10. GENERAL PROVISIONS

Section 1-10-1. Statute of Limitations.

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

- (1) Any action against the Te-Moak Tribe or its officers or employees arising from the performance of their official duties must be commenced within one (1) year of the date the cause of action occurred.
- (2) Actions derivative of leases of the Te-Moak Tribal trust land or other tribal or Indian-owned land on or off the Te-Moak Indian Reservation must be commenced within six (6) years of the date the cause of action accrued.
- (3) Actions alleging intentional torts shall be commenced within one (1) year of the date the cause of action accrued.
- (4) Any other action must be commenced within two (2) years of the date the cause of action accrued, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting the fraud or mistake.
- (5) Criminal offenses committed after enactment of this Code shall be filed within the following time periods or they shall be forever barred:
 - (a) Class A offenses: 5 years;
 - (b) Class B offenses: 2 years;
 - (c) Class C offenses: 1 year.
- (6) The period of limitations for a criminal offense shall commence upon commission of the crime, but shall not run during any period in which the defendant is not physically located on the Te-Moak Tribal Reservation.

Section 1-10-2. Principles of Construction.

The following principles of construction will apply to this Code unless a different construction is obviously intended.

- (1) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.

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

Section 1-10-3. Definitions.

The following definitions will apply for the purposes of this Code:

- (1) Indian or Indian Person: shall include any person of Indian descent who is an Indian for purposes of federal criminal jurisdiction under Title 18, U.S.C. Section 1151, et seq.
- (2) Member: . shall include a person who is enrolled in or lawfully entitled to enrollment in the Te-Moak Tribe pursuant to the Article 1 of the Constitution.
- (3) Reservation: shall include all lands within the jurisdiction or control of the Te-Moak Tribe.
- (4) Tribe: shall mean the Te-Moak Tribe unless another specific Indian Tribe is clearly intended.
- (5) Tribal Council: shall mean the Te-Moak Tribal Council.
- (6) Superintendent: shall mean the Superintendent of the Bureau of Indian Affairs, or any successor officer thereof.

- (7) Age of Majority: shall mean 18 years of age unless otherwise provided in this Code or Tribal Constitution.

CHAPTER 11. JUDICIAL CODE OF CONDUCT AND ETHICS

CANONS

1. A judge should uphold the integrity and independence of the judiciary.

2. A judge should avoid impropriety and the appearance of impropriety in all activities.

3. A judge should perform the duties of office impartially and diligently.

4. A judge may engage in activities to improve the law, the legal system and the administration of justice.

5. A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

6. A judge should regularly file reports of compensation received for quasi-judicial and extrajudicial activities.

7. A judge should refrain from political activity inappropriate to judicial office.

Section 1-11-1. CANON 1. A Judge Should Uphold The Integrity And Independence Of The Judiciary.

Independent and honorable judges are indispensable to justice on the Te-Moak Tribal Reservation. A judge should participate in establishing, maintaining, and enforcing justice. A judge should observe high standards of conduct so that the integrity and independence of all judges may be preserved. The provisions of this Code should be construed and applied to further that objective.

Section 1-11-2. CANON 2. A Judge Should Avoid Impropriety And The Appearance Of Impropriety In All Activities.

TITLE 2. CRIMINAL PROCEDURE

CHAPTER 1. GENERAL PROVISIONS

Section 2-1-1. Scope, Purpose and Construction.

- (1) These rules govern the procedure for all criminal cases in the Te-Moak Tribal Courts.
- (2) Every proceeding in which an adult Indian person is charged with a criminal offense of any degree is a criminal case.
- (3) These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Section 2-1-2. Citation.

These rules may be known and cited as the "Tribal Rules of Criminal Procedure" or "T.R.Cr.P".

Section 2-1-3. Time Computations.

In computing any period of time in these Rules, the day of the act or event from which the designated period begins to run shall not be included, and the last day of the period will be included unless it is a Saturday, Sunday or legal holiday. If a time period prescribed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall not be counted, provided that weekend arrestees shall be arraigned no later than the first available working day of the following week.

Section 2-1-4. Motions.

An application to the Court for an order shall be by motion. A motion other than one made at trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit and/or a memorandum of points and authorities. A copy of all motions shall be served upon all parties or their counsel, and they shall be allowed to appear at a hearing before any order is issued in response to such motion, unless the Court is asked to enter an order agreed by all parties.

Section 2-1-5. Service and Filing of Papers.

- (1) Written motions other than those which are heard ex parte, written notices and similar papers shall be served

on each party in the manner provided for in civil actions.

- (2) All papers required to be served shall also be filed with the Clerk of Court.

Section 2-1-6. Calendars.

- (1) The Tribal Court shall provide for the placing of criminal proceedings on the Court calendar with as little delay as is reasonably possible.
- (2) The Tribal Court shall schedule criminal trials no less frequently than one day per month.
- (3) The Court may for good cause shown by either party direct that a trial be postponed to the next or some succeeding month. However, if the prosecution, for good cause shown, requests and is granted a delay, and if the defendant is incarcerated not having made bail, the defendant shall be released on personal recognizance pending the rescheduled trial, if the offense is Class B or C.
- (4) No criminal trial shall be set for sooner than two (2) weeks after arraignment, unless this requirement is waived by the defendant.

Section 2-1-7. Records.

The Clerk of Court shall keep such records in criminal proceedings as the Chief Judge shall by rule direct. Among the records required to be kept by the Clerk shall be a book known as the "Criminal Docket" in which, among other things, shall be entered each order or judgment of the Court and the date thereof.

Section 2-1-8. Rules of Court.

The Chief Judge may promulgate rules governing criminal procedure, subject to approval of the Tribal Council not inconsistent with these rules and in supplement thereto. Copies of such rules shall be made available for public inspection and copying, and shall be conspicuously posted in the Clerk's office. Copies of any Rules of Court adopted under this provision shall be mailed to all attorneys and lay counselors admitted to practice before the Te-Moak Tribal Courts.

Section 2-1-9. Forms.

Any forms adopted for use in the Te-Moak Tribal Courts are illustrative and not mandatory.

CHAPTER 2. PRE-TRIAL PROVISIONS

Section 2-2-1. Complaint.

- (1) A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court, signed by the prosecutor and sworn to before a judge. All complaints initiated by the prosecutor shall be based on probable cause that the crime charged happened and that the defendant(s) committed the crime charged. A judge shall have the authority to demand the filing of a more detailed statement of the charges by the prosecutor or to hold a preliminary hearing to determine whether lawful probable cause as to the crime exists prior to the issuance of a summons or warrant for the arrest of the defendant(s).
- (2) Complaints shall contain the following:
 - (a) A written statement of the violation describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained. Statements of affidavits by persons having personal knowledge may be expressly referenced in and attached to the complaint.
 - (b) The name and description of the person(s) alleged to have committed the offense.
 - (c) A statement describing why the Court has personal jurisdiction of the defendant.
 - (d) A description of the offense charged.
 - (e) The signature of the prosecutor sworn to before a judge.
- (3) The Chief Judge may designate an individual who shall be available to assist persons in drafting complaints and who shall screen them for sufficiency. Such complaints shall then be submitted without unnecessary delay to the prosecutor and, if the prosecutor approves, to a judge to determine whether an arrest warrant or summons should be issued.

Section 2-2-2. Statute of Limitations.

A complaint must be filed in Court within the following time periods or be forever barred:

- (1) Class A offenses: 5 years.
- (2) Class B offenses: 2 years.
- (3) All other offenses: 1 year.
- (4) Time during which the accused is outside the jurisdiction of the Court, for whatever reason, shall not be included in these time periods.

Section 2-2-3. Search Warrants.

- (1) **Defined:** A search warrant is an order, either written or if necessary verbal, issued by a Judge or Magistrate directed to a Tribal law enforcement officer ordering a search and seizure of property specified in the warrent.
- (2) **Issuance of a Search Warrant:** Every Tribal Judge shall have the power to issue warrants for the search and seizure of property and persons under the jurisdiction of the Court. No warrant shall be issued except upon probable cause, which is supported by a written and/or a sworn statement based upon reliable information, that a search will discover the following:
 - (a) Stolen, embezzled, contraband, or otherwise criminally possessed property; or
 - (b) Property which has been or is being used to commit a criminal offense; or
 - (c) Property which constitutes evidence of the commission of a criminal offense; or
 - (d) Person(s) involved in any alleged criminal activity.
- (3) **When Served:** A warrant shall be served at any time when the Tribal Judge deems necessary.
- (4) **Contents of Search Warrant:** A search warrant shall contain the following:
 - (a) The name(s) of the person(s) whose statements were taken in support of the issuance of the warrant;
 - (b) Name or description of the specific place or person to be searched;
 - (c) The specific property or person to searched and

seized;

- (d) Signature of the issuing Tribal Judge;
- (e) Time warrant was issued and its expiration date.

(5) **Execution and Return of Search Warrant:** Search warrants shall be served by only Tribal law enforcement officers. The serving officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant. The warrant shall be not be in effect longer than seven (7) days from the date of issuance. Warrants not returned within such time limit shall be void.

(6) **Telephonic Search Warrants:** Telephonic or verbal warrants may be issued when necessary. However, they must be evidenced by a written search warrant by the next working day.

(7) **Search Without a Warrant:** No law enforcement officer shall conduct any search without a valid warrant except:

(a) When incident to making a lawful arrest. The search must be limited to the person and the immediate surrounding area;

(b) With the voluntary consent of the person being searched or the person entitled to possession of property being searched; or

(c) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed; or

(d) When the officer has probable cause to believe that the person searched is armed and dangerous. Any such search is limited to a pat down or frisk of the suspect to determine the existence of weapons.

(8) **Disposition of Seized Property:**

(a) The officer serving and executing a warrant shall make an inventory of all proerty seized and a copy of this inventory shall be left with every person from whom property is seized.

(b) A hearing may be held by the Court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property

shall be returned to the owner, unless the property is contraband or used as evidence in a trial. Property taken as evidence shall be returned to the owner after final judgment. Property taken as contraband shall be destroyed, sold at public auction, retained for the benefit of the Tribe, or otherwise lawfully disposed of as ordered by the Court.

- (9) **Exclusion of Unlawfully Obtained Evidence:** The Court shall prohibit the introduction or use at trial of any evidence seized in a search conducted in violation of this Section.

Section 2-2-4. Arrest Warrants.

- (1) Judges shall have authority to issue arrest warrants if they find that there is probable cause to believe that an offense against tribal law has been committed by the named accused, based on sworn written statements or sworn oral testimony.
- (2) The arrest warrant shall contain the following:
 - (a) The name or description and address, if known, of the person to be arrested;
 - (b) The date of issuance of the warrant;
 - (c) Description of the offense charged;
 - (d) Signature of the issuing Judge.
- (3) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his/her possession at the time of the arrest, but upon request shall, as soon as possible, show it to the defendant.
- (4) A warrant shall not be executed by a Tribal or Bureau of Indian Affairs law enforcement official outside the boundaries of the Reservation.

Section 2-2-5. Summons In Lieu of Arrest Warrant.

- (1) A law enforcement officer or a Judge may, in lieu of an arrest warrant, issue a summons commanding the accused to appear before the Court at a stated time and place to answer to a charge.
- (2) The summons shall contain the same information as a

warrant, except that it may be signed by a police officer.

- (3) The summons shall state that if a defendant fails to appear in response to a summons, an arrest warrant shall be issued.
- (4) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his/her usual residence or place of business with a person of suitable age and discretion who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case.

Section 2-2-6. Arrests.

- (1) An arrest is the taking of a person into police custody in order that he/she may be held to answer for a criminal offense.
- (2) No law enforcement officer shall arrest any person for a criminal offense except when:
 - (a) A Judge has signed a warrant commanding the arrest of such person, and the arresting officer has the warrant in his/her possession or knows for a certainty that such a warrant has been issued; or
 - (b) The offense occurred in the presence of the arresting officer; or
 - (c) In the case of a Class A or B offense, the officer has probable cause to believe that the person arrested committed the offense.
- (3) Duties of the Arresting Officer:
 - (a) Must inform the arrested person of his/her intentions to arrest, the cause or reason for the arrest, and the authority by which the arrest is made (if possible under the circumstances);
 - (b) Must show the arrest warrant as soon as practicle if one exists and it is demanded by the arrested person;
 - (c) May use reasonable force necessary to effect an arrest;
 - (d) May search the arrested person and take as evidence

all weapons found;

- (e) Shall as soon as possible deliver the arrested person to jail and obtain a complaint;
- (f) If in fresh pursuit, the officer may continue such pursuit and arrest any person even if outside the exterior boundaries of the Reservation. All persons so arrested may be returned to the reservation by the arresting officer if the arrest occurs in the State of Nevada. Otherwise, the arrested person will be turned over to local police officials pending extradition proceedings.

Section 2-2-7. Notification of Rights at Time of Arrest.

- (1) Upon arrest, the suspect shall be advised of the following rights:

Miranda

- (a) The right to remain silent;
- (b) That any statements made by him/her may be used against them in Court;
- (c) That he/she has the right to obtain counsel at his/her own expense.

- (2) Failure by the officer to advise the suspect of these rights will result in the the dismissal of charges.

In Jail

- (3) The suspect also has the right to a local telephone call. Failure to inform the suspect of this right may result in the dismissal of charges. The Judge must find that there was a good reason for the denial of the call.
- (4) Law enforcement officers shall cease questioning the suspect once he/she requests legal counsel.
- (5) Law enforcement officers shall cease questioning the suspect once legal counsel states that the suspect does not want to answer any questions.
- (6) No statements made by the defendant in violation of Subsections (4) and (5) may be used against the defendant at trial.

Section 2-2-8. Arraignment.

Arraignment: The arraignment proceeding shall consists of the following:

- (1) Bringing the accused before an open Court as soon as reasonably possible, but no later than 72 hours after the arrest, or within the period designated on the summons;
- (2) The accused shall be informed of his/her rights under the Indian Civil Rights Act, and the Judge must be satisfied that those rights are understood by the accused;
- (3) The charge(s) shall be read to the accused, and the Judge must be satisfied that the charge(s) are understood by the accused. Also, the accused must be provided with a copy of the complaint if one has not already been provided;
- (4) The Judge shall call upon the accused to enter a plea of guilty or not guilty to the charge(s);
 - (a) If the accused pleads "not guilty" to the charge, the Judge shall then set a trial date and consider conditions for release prior to trial as provided in this Section.
 - (b) If the accused pleads "guilty" to the charge(s), the Judge shall accept the plea only if satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights which are being waived by entering a guilty plea. The Judge may then impose the sentence or defer sentencing for a reasonable time in order to obtain any information deemed necessary for the imposition of a just sentence. The accused shall be afforded the opportunity to be heard by the Court prior to sentencing.
 - (c) If the accused refuses to enter a plea, the Judge shall enter a plea of "not guilty" on his/her behalf.
- (5) The Judge shall then decide conditions for release of the defendant from custody pending trial or sentencing proceedings.
- (6) If an arraignment is not held within 72 hours from the time of arrest, the defendant must be permitted to make bail. If not, the charge(s) must be dismissed and the defendant released from custody.

Section 2-2-9. Bail; Release From Custody.

- (1) **Opportunity to Make Bail:** All Indian persons arrested for offenses under this Code and incarcerated may be given the opportunity to make bail and be released pending their trial or appeal.
- (2) **Bail; Release Prior to Trial-Personal Recognizance:** Every Indian person charged with a criminal offense before the Tribal Court shall be released from custody on personal recognizance, unless the Judge determines that such release will not reasonably assure the defendant's appearance at subsequent Court hearings. The Judge may condition the personal recognizance release with any reasonable restrictions deemed necessary and proper by the Judge.
- (3) **Bail; Release Prior to Trial-Alternatives:** Where the Judge determines that a personal recognizance release is not appropriate, the Judge may choose from among the following alternatives to assure the appearance of the defendant:
 - (a) **Post a Bond:** Require the defendant to deposit cash or other sufficient collateral in an amount specified by the Judge. The amount shall not exceed twice the aggregate amount of the maximum fine for the offense(s) charged;
 - (b) **Signature Bond:** Require the defendant, and/or any other person or organization to execute a written promise to appear or to deliver the accused at all times required. If the defendant does not appear, the signator shall be liable for the amount for which bond was set.
 - (c) **Reasonable Restrictions:** The Judge may release the defendant with reasonable restrictions on the travel, association or place of residence of the accused during the period of release.
 - (d) **No Bond or Release:** The Judge may deny bond or release where findings from the arguments presented or the past record of the defendant show that no conditions will reasonably assure the appearance of the defendant, or that release of the defendant will pose a significant danger to the community, the accused or to any other person.
- (4) **Bail; Release Pending Appeal:** A convicted person who has been convicted of a Tribal offense and who has filed an appeal or a petition for writ of habeas corpus shall be treated in accordance with the provisions for bail provided herein.

- (5) **Bail Schedule:** A bail schedule for Tribal offenses shall be adopted by the Court and a defendant may obtain release from jail at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged, with the following exceptions:
- (a) **Intoxication:** If the defendant is intoxicated or unconscious condition, such defendant shall not be allowed to post bail according to the bail schedule for at least 8 hours.
 - (b) **Class A Offenses:** Class A offenses may be set only by a Judge upon consideration of the relevant factors and must be set or denied within 72 hours following arrest.
- (6) **Bail Revocation:** The Court may revoke its release of the defendant and order him/her committed at any time where it is determined that the conditions of release will not reasonably assure the appearance of the defendant. Also, bail may be revoked if any conditions of release have been violated. If the defendant fails to appear following posting of cash, collateral or signature bond under this Section, the Court may order the forfeiture of such bond.

Section 2-2-10. Extradition.

- (1) **Compact Required for Extradition:** No extradition shall be available under the provisions of this Code, unless both the Te-Moak Tribe of Nevada and the state, county, municipal, and tribal government or other entity involved have mutually and formally entered into an extradition agreement whereby either party may exercise the power of extradition.
- (2) **Requirement of Tribal Arrest Warrant:** Except as otherwise provided by Federal law or this Code, no person shall be arrested within the jurisdiction of the Tribe for an offense committed outside that jurisdiction unless a Tribal arrest warrant has been obtained. Law enforcement officers of another jurisdiction who seek to arrest any person within the jurisdiction of the Tribe shall apply for a Tribal arrest warrant in accordance with this Code.
- (3) **Application for Tribal Arrest Warrant:**
- (a) An application by law enforcement officers of another jurisdiction for a warrant to arrest a person within tribal jurisdiction shall be made in

a form substantially complying with this Code;

- (b) The application shall be made to the "Chief Judge" or "Chairman of the Tribal Council", who shall, after investigation, either deny the application or order that the application be approved pending a finding of probable cause by the Tribal Court;
 - (c) If the application and accompanying document give the Tribal Court probable cause to believe a crime has been committed, that the person charged has committed it, and that the Court seeking arrest of the person has jurisdiction over the crime, then the Court shall issue a tribal arrest warrant to be executed and returned as are other tribal arrest warrants.
- (4) **Rights of Extradition Defendant:** Except as herein provided, a person arrested under this extradition procedure shall have all the rights of a defendant otherwise appearing before the Tribal Court.
- (5) **Arraignment and Bail of Extradition Defendant:**
- (a) A person arrested on the basis of an application for extradition shall be known as an extradition defendant.
 - (b) An extradition defendant shall be arraigned as provided in this Code and asked if he/she wishes to waive or oppose extradition.
 - (c) An extradition defendant may be admitted to bail under standards appropriate to the offense with which he/she is charged in the other jurisdiction.
- (6) **Waiver of Extradition:** If a defendant waives extradition, he/she shall be transferred to the custody of the law enforcement officers of the other jurisdiction, upon their request.
- (7) **Opposition to Extradition:**
- (a) If a defendant wishes to oppose extradition, the Court shall hold an extradition hearing as soon as possible, but not more than twenty-eight (28) days after arraignment.
 - (b) **Extradition Hearing:** At the extradition hearing, if representatives of the other jurisdiction prove that there is probable cause to believe that the defendant committed a crime and that the other

jurisdiction has jurisdiction over the crime, then the Court shall order extradition.

(8) Extradition Appeal:

- (a) If the extradition is ordered, the defendant shall be informed of his/her right to orally request ten (10) working days to file an appeal. If the defendant does not then immediately request this time to appeal, he/she shall be considered to have waived the right to appeal, and shall be transferred to the custody of law enforcement officers of the other jurisdiction, upon their request.
- (b) Bail or Extradition Appeal: A defendant who has been ordered to be extradited shall be held in custody until an appeal is filed, but may be readmitted to bail after an appeal is filed.

Section 2-2-11. Dismissal.

- (1) The prosecutor may move that a complaint be dismissed and upon the Court's granting such motion, the prosecution of that complaint shall cease. The defendant shall be released and any bail or bail bond released. Such a dismissal shall not be made during trial without the consent of the defendant.
- (2) If there is an unreasonable and unnecessary delay in bringing a defendant to trial, the Court may, on motion of the defendant or its own motion, dismiss the complaint. No delay of less than six (6) months shall be considered unreasonable under this section, provided that where the defendant is incarcerated for more than 1/2 of the maximum possible sentence for the offense(s) charged without being brought to trial, the Court may cause the charge to be dismissed under this section. No time period will be considered unreasonable if the defendant is responsible for the delay in bringing the complaint to trial.

Section 2-2-12. Withdrawal of Guilty Plea.

The Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that justice and fairness would be served.

TITLE III

EXCLUSION AND REMOVAL CODE

CHAPTER 1. LEGISLATIVE INTENT

Section 3-1-1. Statement of Legislative Intent and Determination.

(1) The Te-Moak Tribe of Western Shoshone by its Tribal Council hereby finds and determines that it is necessary to provide a means whereby the Tribe can protect itself, its members, and other persons living on the Reservation, from people and other persons living on the Reservation, from people whose presence on the Reservation is harmful to, or threatens harm to peace, health, safety, morals and general welfare of the Tribe and its members. Such action is deemed necessary as a result of the Tribe's interest in maintaining the aforementioned threatened interests free from harm to protect the cultural identity of the Tribe, and to protect those residents of the Reservation who may be imposed upon, harmed or otherwise disadvantaged. The procedures outlined herein are intended to provide procedural fairness to persons affected by these provisions while, at the same time, recognizing the need, in appropriate situations, to act immediately to remedy actual or threatened harms.

(2) This Title is enacted pursuant to Article ___, Section ___ of the Constitution of the Te-Moak Tribe of Western Shoshone and the inherent sovereignty of the Tribe.

CHAPTER 2. REMOVAL PROCEDURE

Section 3-2-1. Persons Subject to Exclusion and Removal.

All persons who are not members of the Tribe or who are not authorized by Federal law to be present within the exterior boundaries of the Reservation, may be excluded or removed from all or any portion of the Reservation as provided herein.

Section 3-2-2. Grounds for Exclusion and Removal.

A person may be excluded and/or removed from any territory under the exclusive jurisdiction of the Tribe, as defined in this Code, upon any one or more of the following grounds:

(1) Hunting, fishing or trapping on the Reservation without authority from the Tribe or contrary to the rules and regulations of the Tribe governing such activities.

(2) Trading or conducting business upon the Reservation in violation of Tribal or Secretary of Interior regulations.

(3) Prospecting on the Reservation without authorization from the Tribe in violation of Federal law.

(4) Mining, cutting timber, grazing or other use, abuse or damage to Tribal property without authority from the Tribe or in violation of Federal law.

(5) Exploring for or excavating for items, sites or locations of historic, religious or scientific significance without authority from the Tribe or in violation of Federal law.

(6) Committing fraud, schemes or usury against Indian people residing on the Reservation, or inducing them to enter into grossly unfavorable contracts of any kind.

(7) Repeated commission of criminal offenses.

(8) Interfering with or photographing ceremonies or religious shrines without permission from the persons involved or the Tribe

(9) Interfering with the official, political, governmental business or religious affairs of the Tribe.

(10) Doing or threatening to do any act on the Reservation which seriously threatens the peace, health, safety, morals and general welfare of the Tribe, its members, or other persons living on the Reservation.

(11) Engaging in any conduct on the Reservation which would be held to constitute a crime under Tribal, Federal or State law if it had been done within the criminal jurisdiction of the Federal Government or the State of Nevada.

(12) Purchasing or soliciting the purchase of any Indian made jewelry or other Indian arts and crafts without a proper license or in violation of any Tribal or Federal law.

(13) Failure or refusal to pay any taxes, costs or other charges justly due the Tribe after reasonable notice and opportunity to pay.

Section 3-2-3. Notice of Exclusion Hearing.

(1) The Tribal Chairman may cause a Removal or Exclusion Petition to be filed in the Te-Moak Tribal Court and served personally or by registered mail with a summons issued by the Clerk of the Court upon any non-member whenever such officer has reasonable grounds to believe that cause may exist under this Title for removal or exclusion of a non-member, or whenever the Tribal Council directs such officer to cause such petition to be filed and served.

(2) A petition hereunder shall state the grounds for the proposed exclusion, and the names and addresses of witnesses whom the Tribe will produce to support the proposed exclusion. The summons shall name a date, time and place where the non-member may appear before the Tribal Court to show cause why he/she should not

be excluded from the Reservation areas under the exclusive jurisdiction of the Tribe.

(3) Except as otherwise provided in this Section, the notice required shall be served at least ten (10) days in advance of the hearing. Return receipt shall be used in any service by mail.

Section 3-2-4. Hearing Procedure: Order of Exclusion or Removal.

(1) After notice has been served, the Tribal Court shall hold a hearing to determine whether or not the non-member shall be excluded from the Reservation. The non-member shall be given an opportunity at the hearing to:

(a) confront and cross-examine any witness relied upon by the Tribe to justify the proposed exclusion;

(b) present oral and written evidence in self defense;

(c) be represented by counsel at his/her own expense.

(2) The Tribal Court may, in its discretion, grant the request of a non-member for a continuance of the hearing upon a showing of good cause.

(3) In all cases where permanent or indefinite exclusion is sought by the Tribe, and the factual basis is disputed by the non-member, the Tribal Court shall find that the parts supporting the same have been established by clear and convincing evidence. In any other case, the facts supporting exclusion shall be found to exist by a mere preponderance of the evidence. Each decision shall be in writing and shall be based only on the facts and law presented at the hearing.

(4) After the hearing, or after the time set for such hearing, the Tribal Court may order such person excluded from all or any part of the Reservation under the exclusive jurisdiction of the Tribe. In the alternative, the Court may permit the person to remain on the Reservation under such conditions as it deems appropriate. All orders following an exclusion hearing shall specify the period of time during which exclusion will be effective as well as any conditions imposed upon continued residence. Nothing herein shall prevent exclusion for an indefinite period of time if a final order so provides.

Section 3-2-5. Enforcement of Exclusion and Removal Order.

If any person ordered, excluded or removed by the Tribal Court from all or any part of the Reservation does not promptly obey such order, the Tribal Chairman is hereby expressly empowered to:

(1) Direct the Tribal Police to use reasonable force to carry out the exclusion or removal order. Any direction from the Chairman is effective without further proceedings and without any

further judicial decree to authorize the Tribal Police to exclude or remove the person(s) affected by the said order.

(2) Refer the matter to the general counsel of the Tribe or to Federal authorities with the request that they take lawful action necessary to enforce the order.

Section 3-2-5. Emergency Exclusion Without Prior Hearing.

(1) Whenever the Tribal Court finds upon the filing of an appropriate petition under this Title, that there is an immediate need to order the exclusion and/or removal of a person from the Reservation and that the granting of notice and opportunity to be heard to such persons prior to making such order would cause irreparable harm to the interests of the Tribe or its members, the Tribal Court may immediately order such exclusion and/or removal and provide the notice and opportunity for review of such decision as outlined below.

(2) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served by the Tribal Police with a written order of such Court action. This order shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no proper hearing was held, shall inform the person that once he/she has complied with the order, he/she may immediately petition the Tribal Court for a hearing to reconsider the order, that he/she may be represented by counsel at this hearing and present evidence in defense, and shall inform the person that compliance with such order may be enforced by the Tribal or governmental police officers. A copy of the order shall be served by personal service or, if personal service is not reasonably possible, by mailing to the person by registered mail, return receipt requested, at the last known address.

(3) Upon receipt of a petition for a hearing, the Tribal Court shall schedule a hearing within two (2) weeks of the receipt of the petition; provided that the order of exclusion and removal shall remain in force pending hearing and a decision thereon, except for the purpose of hearing and a decision thereon, except for the purpose of attending the hearing. The notice shall notify the non-member of a place on the Reservation boundary where he/she may re-enter in the company of a Tribal Police Officer for the purpose of attending the hearing required under this Section. The Tribal Chairman may order a police officer to accompany the person while on the Reservation coming to and leaving the hearing.

(4) The Tribal Court shall either affirm, modify or rescind its previous order, and shall give the person written notice of this decision. A decision shall be rendered within thirty (30) days of the hearing. If a decision is not rendered within thirty (30) days of the hearing, the initial order shall no longer be valid.

Section 3-2-7. Appeal of Exclusion and/or Removal Order.

(1) The Tribal Appellate Court has jurisdiction to review exclusion or removal orders.

(2) The Appellate Court may reverse all or part of any removal or exclusion order appealed from where the Court finds that the Tribal Court has committed an error of law or procedure, the effect of which was to substantially deprive the aggrieved person any right guaranteed by Federal or Tribal law or which otherwise deprived that person of a fair hearing or that the Tribal Court made any material finding of fact which was not supported by substantial evidence. The Appellate Court shall not reverse all or any part of a removal or exclusion order appealed from solely on account of the existence of harmless legal errors.

TITLE V

DOMESTIC RELATIONS CODE

CHAPTER 1. MARRIAGE

Section 5-1-1. Marriage License.

(1) No marriage shall be performed unless the parties have obtained a marriage license from the Clerk of the Court.

(2) Upon paying a fee of _____, the Clerk shall issue a marriage license to persons who appear entitled to be married.

(3) The Clerk shall keep a record of all marriage licenses and certificates issued.

(4) The marriage license, properly endorsed by the person performing the marriage, shall be returned to the Clerk, who shall issue a marriage certificate to the parties.

Section 5-1-2. Existing Marriages.

(1) All marriages performed other than as provided in this Domestic Relations Code, which are valid under the law of the jurisdiction where and when performed, are valid within the jurisdiction of the Tribe.

(2) All marriages performed on the Reservation prior to the effective dates of this Code, including those performed according to any Tribal custom, are declared valid. Parties to these marriages may obtain a marriage certificate upon proof to the Clerk by affidavit or otherwise of the validity of their marriage, and payment of the filing fee.

Section 5-1-3. Persons Who May Marry.

No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

(1) They are at least _____ years old. Any person under _____ years old must have written and notarized consent of their parents or guardian to be married.

(2) At least one of the persons to be married is an enrolled member of a federally recognized tribe.

(3) Both parties to the marriage have obtained a blood test to detect any transmittable diseases within _____ days prior to the marriage and such test results were negative. A certificate of the test results shall be presented to the Clerk before any license is issued.

(4) The parties cannot be of the same sex.

Section 5-1-4. Who May Perform Marriages.

(1) A marriage may be performed on the Reservation by any of the following:

(a) recognized clergymen or persons recognized by their religions as having authority to marry;

(b) a Judge of the Tribal Court;

(c) any person recognized by any State law as having authority to marry.

(2) No marriage performed before any person professing to have authority to marry shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that such person had such authority and that they have been lawfully married.

Section 5-1-5. Marriage Ceremony.

No particular form of marriage ceremony is required, provided however, that the persons to be married must declare in the presence of the person performing the ceremony, that they take each other as husband and wife, and are thereafter declared to be husband and wife.

Section 5-1-6. Void and Voidable Marriages.

(1) Marriages between ancestors and their descendants, between brothers and sisters, of half as well as whole blood, between an uncle and his neice or an aunt and her nephew, or between first cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.

(2) Marriages between a person who is at the time of the marriage, married to another person still living are void, provided however, that such marriages will be considered valid until ruled otherwise by a Court of competent jurisdiction if the party previously married:

(a) actually believed in good faith that the prior marriage had been dissolved as a result of divorce or annulment; or

(b) actually believed in good faith that his or her prior spouse was dead.

(3) When a marriage is contracted in good faith and in the belief that it is valid, the children of such marriage born or conceived prior to the voiding or receipt of notice of the invalidity of the marriage for any reason shall be legitimate children of both parents.

(4) If either party to a marriage is incapable as a result of some physical cause to have sexual relations and such cause appears

to be permanent, or if the consent of either party to marry was obtained by force, fraud or coercion, the marriage is voidable

CHAPTER 2. ANNULMENT

Section 5-2-1. Grounds for Annulment.

A marriage may be annulled for any of the following reasons existing at the time of the marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled, was under the age of _____ years, and was without consent of the parents or guardian, unless after attaining the age of consent, such party freely co-habits with the other as husband and wife.

(2) That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

(3) That either party was of unsound mind, unless such party, after coming into reason, freely co-habits with the other as husband and wife.

(4) That the consent of either party was obtained by either force or fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely co-habits with the other as husband and wife.

(5) Incurable impotence.

Section 5-2-2. Action to Annul; Parties and Limitations.

An action to obtain a decree of annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

(1) For causes mentioned in Subsection 1, by the party to the marriage who was married under the legal age of consent, within two (2) years after reaching the age of consent, or by a parent or guardian, at any time before such married minor has reached the legal age of consent.

(2) For causes mentioned in Subsection 2 by either party during the life of the other, or by such former husband or wife.

(3) For causes mentioned in Subsection 3, by the party injured, or relative or guardian of the party of unsound mind at any time before the death of either party.

(4) For causes mentioned in Subsection 4, by the party injured, within two (2) years after the discovery of the facts constituting fraud or force.

(5) For causes mentioned in Subsection 5, by the injured or deprived party within two (2) years after the marriage.

Section 5-2-3. Legitimacy of Children.

(1) When a marriage is annulled for any reason, other than for fraud in that the wife is pregnant with a child from a man other than the husband, children born before judgment are legitimate and succeed to the estate of both parents.

(2) The Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances and surroundings of the parents may require.

Section 5-2-4. Conclusiveness of Judgment of Annulment.

A judgment of annulment of a marriage is conclusive only against the parties to the action and those making a claim thereon.

CHAPTER 3. DIVORCE

Section 5-3-1. Divorce and Annulment Procedure.

Proceedings in divorce and annulment shall be started and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. A final decree of divorce shall restore the parties to the status of an unmarried person.

Section 5-3-2. Residency Requirements.

In order to maintain an action for divorce or annulment in the Te-Moak Tribal Court, at least one party to the marriage must be an enrolled member of the Tribe and have lived within the territorial jurisdiction of the Tribal Court for at least _____ prior to bringing the action, except that an annulment may be granted where either party does not live within the territorial jurisdiction of the Court and the marriage was performed under authority of this Code.

Section 5-3-3. Grounds for Divorce.

(1) Impotency of the defendant.

- (2) Adultery by the defendant.
- (3) Desertion by the defendant for a period of more than one (1) year immediately preceding commencement of the action.
- (4) Failure of the defendant to provide the common necessities of life for a period of six (6) months.
- (5) Habitual drunkenness or drug dependency of the defendant for a period of at least one year.
- (6) Felony or Class A conviction of the defendant and sentencing of at least 6 months in jail.
- (7) Habitual cruel treatment by the defendant.
- (8) When the parties have lived apart for at least three (3) consecutive years, except under a decree of separate maintenance.
- (9) Insanity on the part of the defendant.
- (10) Incompatibility: No Fault
 - (a) Incompatibility exists when, because of discord or conflict of personalities, the marriage relationship is destroyed and there is no reasonable expectation of reconciliation;
 - (b) If the parties to a divorce represent to the Court by sworn pleadings that incompatibility exists and that they desire a divorce on these grounds, the Court shall, without requiring an evidentiary hearing on the question of incompatibility, enter an appropriate decree of divorce, which decree shall also dispose of, or reserve for later disposition, all matters respecting property, debts, custody, visitation, support, alimony and such related issues as the Court may deem appropriate;
 - (c) If any party to a divorce proceeding represents to the Court that Incompatibility of the parties does not exist, no decree of divorce on such grounds may be entered without an evidentiary hearing upon which the Court will determine whether the incompatibility of the parties has been proven.

Section 5-3-4. Limitations.

A divorce must be denied in all cases when there is an unreasonable lapse of time before the commencement of the action, or two years have passed since the grounds became or should have become known to the complaining party and subsequent actions by the

complainant appear to condone the activity or situation, provided that this limitation shall not apply to a divorce proceeding on grounds of incompatibility.

Section 5-3-5. Alimony; Maintenance; Restraint.

- (1) The Court may order either party to pay the Clerk for the benefit of the other party a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend the action.
- (2) The Court may restrain either party from doing certain acts harmful to the other or to the children, or the property of either, during the pendency of the divorce proceedings.

Section 5-3-6. Pleadings; Findings; Decree.

- (1) The complaint shall be in writing and signed by the plaintiff or plaintiff's counsel.
- (2) No decree of divorce shall be granted except upon legal evidence taken in the cause by the Court who shall make and file its findings and decree upon the evidence, provided that this requirement of proof shall not be applicable to divorce proceedings resolved:
 - (a) by consent decree;
 - (b) by default; or
 - (c) upon admission of the grounds for divorce pleaded.
- (3) The decree shall become absolute upon entry.

Section 5-3-7. Disposition of Property and Child Support.

- (1) When a decree of divorce is made, the Court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children by alimony and child support, as may be equitable. Subsequent changes or new orders may be made by the Court with respect to the custody of the children or the distribution of property as shall be reasonable and proper.
- (2) The purpose of alimony is not punitive, but may be ordered by the Court as necessary on the temporary basis to enable a spouse to secure additional job skills, education, training or medical treatment to assist in becoming self-sufficient, provided that in the case of an aged or ill spouse of limited means and limited employment options, permanent alimony may be required as

the Court deems just under the circumstances taking into account the relative financial status and obligations of the parties, the duration of the marriage and such other factors as the Court deems appropriate.

Section 5-3-8. Custody of Children.

- (1) In any case of separation of husband and wife having minor children, or whenever a marriage is declared void or dissolved, the Court shall make an order for the future care and custody of the minor children as it may deem just and proper.
- (2) In determining custody, the Court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties.
- (3) The Court may inquire of the children and take into consideration the children's desires regarding the future custody, however, such expressed desires shall not be controlling. However, the Court may determine the children's custody based on the desires and preferences of any child over the age of 14 years old.

CHAPTER 4. SEPARATE MAINTENANCE AND PROPERTY RIGHTS

Section 5-4-1. Separate Maintenance.

- (1) A husband or wife, living in this jurisdiction, who through no fault of his/hers, or by agreement with their spouse, is living separate and apart from their spouse, or whose spouse has deserted him/her, or has failed to provide support when otherwise able to do so, may maintain an action for a decree of separate maintenance. Either party should be allowed to bring an action, not just limited to the wife as current code allows.
- (2) During the pendency of the action, the Court may order the husband or wife to pay temporary alimony and child support as in an action for divorce.
- (3) If it appears that the husband or wife is entitle to such, the Court shall grant a decree of separate maintenance awarding custody of children, alimony, child support and expenses of suit as may be equitable under the circumstances.

Section 5-4-2. Property Rights of Married Persons.

- (1) Either husband or wife can obtain, own, hold, give, sell or otherwise deal with real or personal property as if they were unmarried.

- (2) Either husband or wife can enter into contracts and sue or be sued to the same extent and in the same manner as if unmarried.
- (3) Neither husband nor wife nor the property of either in which their spouse has no interest is liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.
- (4) A conveyance, transfer, or lien executed by either husband or wife in favor of the other shall be valid to the same extent as between other persons.
- (5) Nothing in this section shall alter existing inter-spousal or spousal rights and limitation respecting the sale, transfer or encumbrance of real property constituting a marital "homestead" interest under applicable law.

Section 5-4-3. Family Expenses.

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, and they may be enforced jointly or separately.

Section 5-4-4. Custody of Children and Property.

- (1) Absent a judicial decree of property distribution or custody or otherwise, neither the husband or the wife can remove the other or the children from the family dwelling without the consent of the other, provided, that children may be removed from the family residency by one parent without the consent of the other if it appears to be reasonably necessary to protect the physical well being of the children, the children are thereafter provided with a more proper living environment, and application is made to the Court within ten (10) days for an order of the Court, which is subject to modification, approving the removal of the children.
- (2) In the event that either spouse has abandoned the family, the remaining spouse is entitled to custody of all children under the age of 14 years old, unless a Court of competent jurisdiction shall otherwise direct. This section is modified to apply to both husband or wife in case of abandonment.

CHAPTER 5. DOMESTIC ABUSE

Section 5-5-1. Definitions.

- (1) **Abuse:** means physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily

injury or assault.

- (2) **Spouse:** means a person with whom the victim is currently living with or who has lived with the victim in the past, regardless of whether they are/were married, or a person with whom the victim has a child in common regardless of whether they have been married or have lived together at any time. The term "spouse" is not restricted to the narrow sense implied by legal marriage for the purposes of this section.
- (3) **Probable Cause:** means that based on the officer's observations and statements made by the parties involved and witnesses , if any, the officer using reasonable judgment believes an assault did occur and the person to be arrested committed the assault.

Section 5-5-2. Mandatory Arrest Provision.

- (1) An officer shall arrest and take into custody persons whom the officer has probable cause to believe assaulted another person with whom he/she is residing with or has formerly resided with. No warrant is required to make an arrest under this section.
- (2) The victim need not sign a complaint for an arrest to occur.
- (3) An officer shall arrest under probable cause even though it may be against the expressed desires of the victim.
- (4) An officer shall also arrest and take into custody a person whom the officer has probable cause to believe has violated an order for protection restraining the person from contact with the victim or excluding the person from the residence if the existence of the order can be verified by the officer. The arrest shall be made regardless of whether or not the person violating the order was invited back into the home.
- (5) An officer may arrest when responding to a call involving persons who are residing together or who have resided together in the past if the officer has probable cause to believe that the alleged assailant has within the past twenty-four (24) hours placed the alleged victim in immediate fear of bodily harm.
- (6) Whenever an officer investigates an allegation, whether or not an arrest is made, the officer shall make a written report of the alleged incident and submit that report to the Prosecutor. The Prosecutor shall forward copies of all written reports to the Domestic Violence Task Force within 48 hours. **A DOMESTIC VIOLENCE TASK FORCE NEEDS TO BE ESTABLISHED, IF NOT ALREADY IN**

EXISTENCE. ALSO, SHOULD THERE BE STATUTORY LANGUAGE IN THIS CODE CREATING THIS TASK FORCE?

- (7) Immediately following a domestic related arrest, the officer shall advise victims of the availability of the Domestic Violence Task Force and other Domestic Violence projects and give legal rights and service cards to victims. In addition, the officer shall advise the victim that an advocate will contact him/her to explain the legal and service options available. The officer shall also request that the jailer contact Domestic Violence Task Force or Indian Health Services immediately following the arrest procedures and inform them that an arrest has been made.

Section 5-5-3. Pre-Release and Sentencing Alternatives

- (1) Anyone arrested under this Ordinance shall be held until arraignment. If a bond is set, the Court may place additional restrictions upon the defendant for release for the protection of the alleged victim.
- (2) If the defendant enters a not guilty plea or any other plea other than guilty, the Court may continue any restrictions upon the defendant for the protection of the alleged victim as conditions for any pre-trial release.
- (3) If the defendant enters a plea of guilty, a pre-sentencing investigation may be ordered, and the victim, either personally or through an advocate may communicate any concerns to the Court.
- (4) The Judge may suspend imposition of sentence for the first offense. When sentences are suspended, there must be complete cooperation with the orders of the Court requiring completion of the domestic violence program.
- (5) The defendant shall/may be ordered to participate in an appropriate domestic violence program. The defendant will be cited for contempt of Court if there is a failure to comply.
- (6) Upon any second or subsequent offense, the offenders shall be sentenced to jail accordingly. After serving their sentence, they must complete the domestic violence counseling.

Section 5-5-4. Protection Order.

- (1) A petition for relief under this section maybe made by any family or household member on behalf of himself or herself or on behalf of minor children.
- (2) A petition for relief shall allege the existence of

domestic abuse and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

- (3) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.
- (4) The Court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.
- (5) The Court shall advise a petitioner of the rights to file a motion and affidavit and to sue without cost. No one shall be denied the right to file because of the inability to pay fees. All fees shall be waived if the petitioner indicates an inability to pay.

Section 5-5-5. Hearing on Application; Notice.

- (1) Upon receipt of the petition, the Court shall order a hearing, which shall be held no later than 14 days from the date of the order. Personal service shall be made upon the respondent not less than five (5) days prior to the hearing. In the event that personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the Court may set a new hearing date.
- (2) Notwithstanding the provisions of paragraph (1), service may be made by one week published notice provided the petitioner files with the Court an affidavit stating that an attempt at personal service made by a law enforcement official was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this paragraph is complete seven (7) days after publication. The Court shall set a new hearing date if necessary to allow the respondent the five day minimum notice required under this section.

Section 5-5-6. Relief by the Court.

The Court may:

- (1) Restrain the abusing party from committing acts of domestic abuse.
- (2) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner and restrain the abusing party from any contact with the victim.

- (3) Award temporary custody or establish temporary visitation with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. If the Court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the Court shall condition or restrict visitation as to time, place, duration or supervision or deny visitation entirely, as needed to guard the safety of the victim and the children. The Court's deliberation under this section shall in no way delay the issuance of a protection order.
- (4) Provide upon request of the petitioner counseling or other social services for the parties.
- (5) Order the abusing party to participate in treatment or counseling services.
- (6) Award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the Court for all such transfers, encumbrances, dispositions and expenditures made after the order is served or communicated to the party restrained in open Court.
- (7) Order, at its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to any of the support groups of the Te-Moak Tribe. Any relief granted by the protection order shall be for a fixed period not to exceed one year, except when the Court determines a longer fixed period is appropriate.
- (8) Restrain either party from hitting each other even though they are living together.

Section 5-5-7. Standing Protection Order.

- (1) Where an application under this section alleges an immediate and present danger of domestic abuse, a standing protection order will exist, pending a full hearing, and granting relief as the Court deems proper, including an order:
 - (a) restraining the abusing party from committing acts of domestic abuse;
 - (b) excluding the abusing party from the dwelling they share or from the residence of the other, and from any contact with the victim except by further order of the Court.

- (2) A standing protection order shall be effective for a fixed period, not to exceed 14 days, except for good cause shown. A full hearing, as provided by this section, shall be set for no later than seven (7) days from the issuance of the standing order. The respondent shall be served forthwith a copy of the standing order along with a copy of the petition and notice of the date set for the hearing.
- (3) When service is made by published notice, as provided under this Section, the petitioner may apply for an extension of the period of the standing order at the same time the petitioner files the affidavit required under that section. The Court may extend the standing order for an additional period not to exceed 14 days. The respondent shall be served forthwith a copy of the modified standing order along with a copy of the notice of the new date set for the hearing.

Section 5-5-8. Service of Protection Order.

Orders are to be served personally, upon the respondent by a police officer. If the respondent cannot be located, the order will be mailed by certified mail to the respondent's last known address.

Section 5-5-9. Law Enforcement Assistance; Service and Execution.

When a protection order is issued, upon request of the petitioner, the Court shall order the police to accompany the petitioner and to assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution of the protection order.

Section 5-5-10. Right to Apply for Relief.

A person's right to apply for relief shall not be affected by his or her leaving the residence or household to avoid abuse.

Section 5-5-11. Modification of Protection Order.

Upon application, notice to all parties, and hearing, the Court may modify the terms of an existing protection order.

Section 5-5-12. Copy to Law Enforcement Agency.

A protection order granted pursuant to this chapter shall be forwarded by the Clerk of the Court within 24 hours to the Tribal Police Department. The Tribal Court shall make available to each officer information as to the existence and status of any protection order issued under this section.

Section 5-5-13. Violation of Protection Order.

- (2) A standing protection order shall be effective for a fixed period, not to exceed 14 days, except for good cause shown. A full hearing, as provided by this section, shall be set for no later than seven (7) days from the issuance of the standing order. The respondent shall be served forthwith a copy of the standing order along with a copy of the petition and notice of the date set for the hearing.
- (3) When service is made by published notice, as provided under this Section, the petitioner may apply for an extension of the period of the standing order at the same time the petitioner files the affidavit required under that section. The Court may extend the standing order for an additional period not to exceed 14 days. The respondent shall be served forthwith a copy of the modified standing order along with a copy of the notice of the new date set for the hearing.

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Section 5-5-13. Violation of Protection Order.

- (1) Violation of an order by the respondent who has had notice of the protection order is a misdemeanor. **WHAT CLASS?**
- (2) A police officer shall arrest without a warrant and take into custody a person whom the police officer has probable cause to believe has violated a protection order if the existence of the order can be verified by the officer.
- (3) A violation of a protection order shall also constitute contempt of court, and be subject to attendant penalties.
- (4) In the event of violation of a protection order, the mandatory arrest provision applies.

Section 5-5-14. Reporting Requirements.

Any physician, physician's assistant, nurse, community agency worker having reasonable cause to suspect that any person has been a victim of domestic abuse shall report or cause a report to be made in accordance with the provisions of this chapter.

Section 5-5-15. Investigation and Prosecution.

- (1) The Prosecutor of the Te-Moak Tribal Court, with the aide of tribal law enforcement officers, shall upon receipt of any report pursuant to this chapter, investigate immediately. Such investigation shall not prohibit any other lawful action as may be provided by law.
- (2) Follow up investigations shall be done as necessary.
- (3) Public Health Service/Indian Health Service shall do the assessment and shall forward a written copy of the findings to the Clerk of Court and to Domestic Violence Task Force. The Clerk of Court shall place the assessment in the case file.

Section 8-5-16. Appellate Review.

- (1) The Appellate Court shall not stay the execution of sentencing under this chapter, but may review legal issues under its review powers.
- (2) Exception: If the Appellate Court determines that legal grounds exist for review, then and only then may it stay the execution of sentence, pending its review.
- (3) The Appellate Court shall limit its review to questions of law, leaving factual questions to the Court of original jurisdiction.

TITLE VI

PROBATE CODE

CHAPTER 1. GENERAL PROVISIONS

Section 6-1-1. Te-Moak Tradition.

- (1) The traditional Te-Moak way for distribution of property upon death is hereby recognized and reaffirmed by the Code. There shall be no involvement by the Te-Moak Tribal Courts in such distribution or disposition of estates upon death except upon referral by any family member. The Tribal Court shall have no jurisdiction over any probate proceeding except as provided in the preceding sentence.
- (2) The Court may adjudicate any question relating to title to any beneficial interest in trust property on petition filed by the Bureau of Indian Affairs.
- (3) The law of the State of Nevada relative to decedents' estates may be referred to and followed in situations where this Probate Code provides no guidance regarding the handling of decedent's estates, but only so far as such law is not inconsistent with the provisions and spirit of this Probate Code.
- (4) Nothing in this title shall bar any second party from filing an appropriate action in the Tribal Courts to secure possession of any property pledged as security on any credit instrument if the obligations on that instrument are in default.

Section 6-1-2. Construction.

These provisions relating to decedent's estates shall be liberally construed and applied effect to the underlying policy of distributing a decedents' property according to the decedent's intent where there is a valid will manifesting such intent, or according to the provisions of this Probate Code where there is not a valid will.

Section 6-1-3. Effect of Fraud and Evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Probate Code or if fraud is used to avoid or circumvent the provisions or purposes of the Probate Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud, including restitution from any person (other than a bona fide purchaser who purchased without knowledge of the fraud) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within five (5) years after the discovery of the fraud, but no proceeding may be

brought against one not a perpetrator of the fraud later than two (2) years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his/her lifetime which affect the succession of the estate.

Section 6-1-4. Evidence as to Death or Status.

In proceedings under this Code the rules of evidence in the trial court are applicable unless specifically displaced by the Probate Code. In addition, the following rules relating to determination of death and status are applicable:

- (1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent.
- (2) A certified or authenticated copy of any record of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report.
- (3) A person who is absent for a continuous period of five (5) years, during which he/she has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. Death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Section 6-1-5. Practice in Court.

Unless specifically provided to the contrary in this Probate Code or unless inconsistent with its provisions, the Te-Moak Rules of Civil Procedure, including the rules governing vacation of orders and appellate review, control formal proceedings under this Probate Code.

Section 6-1-6. Records and Certified Copies.

The Clerk of the Court shall keep a file for each decedent of all documents filed with the Court under this Probate Code and shall keep a numerical index of all such estates to facilitate access to such records. Upon payment of the fee (not to exceed fifty cents per copy page), the Clerk shall issue certified copies of any document or paper so filed.

Section 6-1-7. Jury Trial.

If properly demanded, a party is entitled to a trial by jury in any proceeding in which any genuine controverted question of

fact arises, or the trial judge may order a jury trial on any such issue upon motion. Otherwise all proceedings under this Probate Code shall be handled by a trial judge, as is appropriate.

Section 6-1-8. Oath or Affirmation of Filed Documents.

Except as specifically provided in this Probate Code, every document filed with the Court under this Probate Code shall be deemed to include an oath, affirmation or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and the penalties for perjury shall follow deliberate falsification thereof.

Section 6-1-9. Notice.

- (1) If notice of a hearing on any petition or other matter is required, and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or attorney, or if it is requested that notice be sent to an attorney. Notice shall be given:
 - (a) by mailing a copy thereof at least 14 days before the time set for the hearing by certified, registered or ordinary first-class mail addressed to the person being notified at the post office address given in demand for notice, if any, or at the office or place of residence, if known; or
 - (b) by hand delivering a copy thereof to the person being notified at least 14 days before the time set for the hearing; or
 - (c) if the address, or identity of any person is not known and cannot be ascertained by reasonable diligence, by posting a copy of the notice in at least three (3) conspicuous public places on the Reservation at least 14 days before the time set for hearing. **SHOULD BE BY PUBLICATION, CIV. PRO.**
- (2) The Court for good cause shown may provide for a different method or time of giving notice for any hearing.
- (3) Proof of service shall be made at or before the hearing and filed in the proceeding.
- (4) A person, including a guardian ad litem, or other fiduciary, may waive notice by a writing signed by him/her or an appropriate attorney and filed in the proceeding.

Section 6-1-10. Renunciation of Succession.

A person (or personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument with the Court not later than six (6) months after the decedent's death or the time at which it is determined that the person is entitled to take property if such is not known at the time of death. The instrument shall:

- (1) describe the property or part thereof or interest therein renounced;
- (2) be signed by the person renouncing; and
- (3) declare the renunciation and the extent thereof.
- (4) Upon proper renouncement, the interest renounced passes as if the renouncing person had predeceased the decedent or donee.

Section 6-1-11. Effect of Divorce, Annulment, and Separation.

A person who is divorced from a decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he/she is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of the Probate Code.

Section 6-1-12. Effect of Homicide.

- (1) A surviving spouse, heir or devisee who criminally and intentionally kills the decedent is not entitled to any benefits under the will or under this Probate Code, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.
- (2) Any joint tenant who criminally and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his/her property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.
- (3) A named beneficiary of a bond, life insurance policy or other contractual arrangement who criminally and intentionally kills the principle obligee or the person upon whose life the policy is issued is not entitled to

any benefit under the bond, policy or other contractual arrangements, and it becomes payable as though the killer had predeceased the decedent.

- (4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.
- (5) A final judgment of conviction of an offense containing the elements of criminal and intentional killing is conclusive for purposes of this section. In the absence of a conviction of criminal and intentional killing, the Court may determine by a preponderance of evidence whether the killing was criminal and intentional for purposes of this section.

CHAPTER 2. INTESTATE SUCCESSION

Section 6-2-1. Intestate Estate.

In any probate proceeding properly before the Court, when any member of the Tribes dies without disposing of all or part of his/her property by a valid will, all such property not so disposed will pass in accordance with the traditional Te-Moak way for distribution of property upon death.

CHAPTER 3. PROBATE AND INTESTATE SUCCESSION

Section 6-3-1. Petition.

- (1) When any member of the Tribe dies leaving an intestate estate subject to the jurisdiction of the Te-Moak Tribal Court, any person claiming to be an heir of the decedent, or the Tribe, may petition the Court for a determination of the heirs of the decedent and for distribution of such property. The petition shall contain the names and addresses of all persons known to the petitioner who may be entitled to share in the distribution of the estate.
- (2) Whenever there is a valid will probated by the Court which does not dispose of all of the decedent's property, a determination of the heirs entitled to such property and its distribution shall be made by the Court at or before the time the remainder of the estate is distributed without the necessity of a separate petition and proceeding.

Section 6-3-2. Administrator of Intestate Estate.

- (1) If an executor is appointed over a decedent's property which is disposed of by a valid will, such person shall likewise assume authority over the decedent's intestate

estate and administer it with the rest of the decedent's estate.

- (2) Whenever it reasonably appears that such is necessary to the preservation, administration and/or distribution of a decedent's intestate estate, the Court shall appoint an administrator over the estate, It shall not be necessary to appoint an administrator if the value of the decedent's property appears to be less than \$1,000.00 in value, no problems in administering the estate are foreseen, and no interested party requests that one be appointed.
- (3) The following persons, if legally competent, shall be afforded priority in order of their listing for appointment as administrator: the surviving spouse, children in descending order of age, other blood relatives in order of their closeness of relationship; any adult tribal member.
- (4) The duties of the administrator shall be:
 - (a) to take possession of all property of the decedent subject to this Probate Code;
 - (b) within one month of appointment, make an inventory and appraisement of such property and file it with the Court;
 - (c) determine and file with the Court a list of all known relatives of the decedent, their ages, and their relationship to the decedent;
 - (d) subject to the approval of the Court ascertain and pay all of the debts and legal obligations of the decedent;
 - (e) prosecute and defend actions for or against the estate;
 - (f) distribute the estate in accordance with the order of the Court and file receipts with the Court showing distribution of the estate.
- (5) The administrator shall file a bond in an amount to be set by the Court to insure the faithful, honest performance of the duties by the administrator. Unless otherwise made to appear necessary or desirable, no bond shall be required of an administrator who is the spouse or child of a decedent.

Section 6-3-3. Appointment of Administrator.

- (1) Upon receipt of a petition to administer an intestate estate, the Clerk shall schedule a hearing at which an administrator will be appointed. This hearing shall be scheduled far enough in advance to allow the required notice to be made.
- (2) Notice of the hearing shall be made by the petitioning party or by the posting at the Tribal Administration Building. **Or by Civ. Pro. requirements. Notice by Publication.**
- (3) The Court shall determine who is the proper person to appoint as administrator, and if such person manifests a willingness to serve, order the appointment as such.

Section 6-3-4. Oath of Administrator; Letters of Administration.

- (1) Upon the appointment as administrator, the person appointed shall take an oath to be prescribed by the Court to the effect that the person will faithfully and honestly administer the estate.
- (2) Upon taking the oath and filing the bond, if any is required, the administrator shall be granted Letters of Administration as proof of the appointment.

Section 6-3-5. Notice to Creditors.

The administrator of the estate or the Clerk, if no administrator is appointed, shall send notices to creditors to be posted in at least conspicuous places on the Reservation and published at least twice in a publication. This notice shall state that creditors have 90 days from the date of the first publication of the notice to present their claims to the administrator or Clerk and that only those claims so presented shall be paid by the estate. Notice by mailing shall also be given to each creditor of whom the administrator or Clerk has actual knowledge.

Section 6-3-6. Payment of Creditor.

- (1) Payment of creditors of the decedent shall be made by the administrator only upon the order of the Court after determining the validity of the claims by affidavit or personal testimony of the claimant.
- (2) All just claims of creditors allowed by the Court shall be paid before distribution of the estate but only after payment of the family allowance and homestead allowance as provided herein.

Section 6-3-7. Accounting.

Prior to the distribution of every estate for which an administrator has been appointed, the administrator shall render an

accounting to the Court for its approval, of all receipts and disbursements. from the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney's and/or administrator's fees involved for which approval for payment is sought. In estates in which no administrator is appointed, the Clerk shall account to the Court for all transactions relating to the estate.

Section 6-3-8. No Taker.

If there is no taker under the provisions of this part, the intestate estate passes to the Te-Moak Tribe.

Section 6-3-9. Advancements.

If a person dies intestate as to all estate, property which he/she gave in their lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in contemporaneous writing by a decedent or acknowledged in writing by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgement provides otherwise.

Section 6-3-10. Debts to Decedent.

A debt owed to the decedent is not charged against the intestate share of any person except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

Section 6-3-11. Status of Heirs.

No person is disqualified to take as an heir because the person through whom heirship is claimed is not a member of the Te-Moak Tribe or because the person does not live on the Reservation.

CHAPTER 4. WILLS

Section 6-4-1. Who May Make a Will.

Any person 18 years of age or older and is of sound mind may make a will.

Section 6-4-2. Execution.

Except as provided for holographic wills, every will shall be in writing and signed by the testator or in the testator's name by some other person in the testator's presence and by his/her

direction, and shall be signed by at least two (2) persons, each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

Section 6-4-3. Holographic Will.

A will which does not comply with the next preceding section is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

Section 6-4-4. Self-Proved Will.

An attested will may, at the time of its execution or at any subsequent date, be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before a notary public or Tribal Judge and evidenced by the notary or Judge's certificate, under official seal, attached or annexed to the will in form and content as follows:

THE STATE OF _____

COUNTY OF _____

We, _____,

and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his/her last will, and he/she had signed willingly or directed another to sign for him/her, and that he/she executed it as his/her free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness, and that to the best of his/her knowledge the testator was at the time 18 or more years of age and of sound mind and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____, 19____.

(signed)

SEAL

(Official capacity of Officer)

Section 6-4-5. Who May Witness.

- (1) Any competent person may act as a witness to a will.
- (2) A will or any provision thereof is not invalid because the will is signed by an interested witness.

Section 6-4-6. Choice of Law as to Execution.

A written will is valid if execution in compliance with this Probate Code or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled or has a place of abode. **MESSY**

Section 6-4-7. Revocation by Writing or Act.

A will or any part thereof is revoked:

- (1) By a subsequent will which revokes the prior will in whole or in part expressly or by inconsistency; or
- (2) By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose in his/her presence and by his/her direction.

Section 6-4-8. Revocation by Divorce.

If, after executing a will, the testator is divorced or marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

Section 6-4-9. Revival of Revoked Will.

- (1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that he/she intended the first will to take effect as executed.

- (2) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

Section 6-4-10. Incorporation by Reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

Section 6-4-11. Events of Independent Significance.

A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

Section 6-4-12. Devisee Survival Rule: 100 Hours.

A devisee who does not survive the testator by 100 hours is treated as if he/she predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

Section 6-4-13. Simultaneous Death.

- (1) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he/she had survived, except as provided otherwise.
- (2) Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.
- (3) Where there is no sufficient evidence that two joint tenants by the entirety have died otherwise than

simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

- (4) Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.
- (5) These provisions on simultaneous death shall not apply in cases where the decedent has made provision for a different distribution in a will, trust, deed or contract of insurance.

Section 6-4-14. Rules of Construction and Intent.

The intent of a testator as expressed in a will controls the legal effect of the disposition. The rules of construction expressed in the succeeding sections of the Probate Code apply unless a contrary intent is indicated by the will.

Section 6-4-15. After Acquired Property.

A will is construed to pass all property which the testator owns at death, including property acquired after the execution of the will.

Section 6-4-16. Anti-Lapse; Deceased Devisee; Class Gifts.

If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, the issue of the deceased devisee who survive the testator by 100 hours take in place of the deceased devisee, and if they are all of the same degree of kinship to the devisee, they take equally; but if of unequal degree, then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his/her death occurred before or after the execution of the will.

Section 6-4-17. Failure of Testamentary Provision.

- (1) Except as provided in the next proceeding section, if a devisee other than a residuary devisee fails for any reason, it becomes a part of the residue.
- (2) Except as provided in the next proceeding section, if the residue is devised to two or more persons and the share

of one of the residuary devisee fails for any reason, his/her share passes to the other residuary devisee, or to other residuary devisee in proportion to their interests in the residue.

Section 6-4-18. Exercise of Power of Appointment.

A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

Section 6-4-19. Non-Exoneration.

A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

Section 6-4-20. Construction of Generic Relationship Terms.

Mixed-bloods, adopted persons and persons born out of wedlock are included in a class gift terminology and terms of relationship in accordance with rules for determining relationship for purposes of intestate succession.

Section 6-4-21. Ademption by Satisfaction.

Property which a testator gave in his/her lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part only if the will provides for deduction of the lifetime gift or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever comes first.

CHAPTER 5. PROBATE OF WILLS

Section 6-5-1. Petition for Letters of Testamentary.

A petition for Letters Testamentary may be made by any person having possession of a decedent's will. The petition must be in writing, signed by the petitioner, and shall state the basis for the Court's jurisdiction, the names of the heirs of the decedent, if known, and the name or names of any person specified in the will as executor and the address of such person if known. The original copy of the will shall be submitted to the Court with the petition.

Section 6-5-2. Qualification of Executor.

The Court shall appoint an executor to administer the estate. The executor shall be a competent adult Tribal member and preference shall be given, if such persons are otherwise qualified, to the person named in the will as such, followed by the surviving spouse or child of the decedent with preference given in descending order of age.

Section 6-5-3. Appointment of Executor.

- (1) Upon receipt of a petition for Letters Testamentary, the Clerk shall schedule a hearing at which an executor will be appointed and Letters Testamentary authorized. The hearing shall be scheduled so that adequate notice to interested persons can be made.
- (2) Notice of the hearing shall be made by the petitioning party to all persons named as takers under the will, and to all known heirs of the decedent if different from the named takers, and also by posting notice in a conspicuous place in the Tribal Administrative Building.
- (3) At the hearing, the Court shall first determine the validity of the decedent's will and then appoint an executor to administer the estate according to the terms of this Probate Code and the decedent's will.
- (4) Letters Testamentary shall be granted to the person appointed as executor upon the taking of an oath, to be prescribed by the Court, to the effect that the person will faithfully and honestly administer the estate, and upon the filing of a bond, if required.

Section 6-5-4. Duties of Executor, Bond.

The duties of the executor shall be the same as those prescribed in this Probate Code for the Administrator of an intestate estate, and the person shall file a bond in a like manner and subject to the same exceptions.

Section 6-5-5. Creditors.

Notice to creditors, determination of the validity of claims, and payment of claims shall be handled as prescribed for intestate estates.

Section 6-5-6. Accounting.

Prior to the distribution of the estate remaining after payment of all just claims and priority payments, the executor shall submit to the Court for approval an accounting of all receipts and disbursements for the estate, showing the present status of the estate and that it is ready for distribution, and also showing the computation of any attorney and/or executor's fee involved for which approval for payment is sought.

Section 6-5-7. Distribution; Closing Estate.

- (1) When it is made to appear to the Court that an estate is ready to be distributed, the Court shall order such distribution according to the provisions of the decedent's will or the rules of intestate succession, whichever is applicable, and according to the rules set forth in this Probate Code.
- (2) The estate shall be closed and the personal representative of the estate dismissed and the bond, if any, released upon filing with the Court receipts showing that the estate is fully distributed, and also upon filing the personal representative's affidavit that the estate is fully administered and ready to be closed.

Section 6-5-8. Distribution; Assets Appropriated; Abatement.

- (1) Except as provided in subsection (2), and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:
 - (a) property not disposed of by the will;
 - (b) residuary devises;
 - (c) general devises;
 - (d) specific devises.
- (2) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and, upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.
- (3) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intent of the testator.
- (4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from,

other interests in the remaining assets.

Section 6-5-9. Property Discovered After Estate Closed.

An estate may be reopened whenever necessary to dispose of a decedent's property discovered after the estate has been closed. The Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after discovered property in the expenses of the estate.

Section 6-5-10. Personal Representative's and Attorney's Fees.

- (1) An administrator or executor may receive a fee of 5% of the value of the gross estate, but not less than \$50.00, to be paid from the estate prior to final distribution of the estate.
- (2) An attorney who represents the personal representative of an estate for purposes of administering the estate may be paid from the estate a fee of 5% of the gross estate, but not less than \$50.00. A greater amount may be approved upon a showing of extraordinary service to the estate.

CHAPTER 6. FAMILY RIGHTS

Section 6-6-1. Right to Elective Shares.

If a married Tribal member domiciled on the Reservation dies, the surviving spouse has a right to elect to take an elective share of one-third (1/3) of the estate of the decedent, less funeral and administration expenses, family allowance and enforceable claims against the estate, plus the value of all property in excess of \$1,000.00 transferred by the decedent to any person other than the surviving spouse in the three years preceding their death to which the surviving spouse has not joined by written consent.

Section 6-6-2. Right of Election Personal to Surviving Spouse.

The right of election of the surviving spouse may be exercised only during his/her lifetime. In the case of an incompetent or protected person, the right of election may be exercised only by order of the Court in which protective proceedings as to his/her property are pending, after finding that exercise is necessary to provide adequate support of the protected person during his/her probable life expectancy.

Section 6-6-3. Waiver of Right to Elect and of Other Rights.

The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract,

agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him/her from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

Section 6-6-4. Proceeding for Elective Share; Time Limit.

- (1) The surviving spouse may elect to take his/her elective share in the estate by filing in the Court and mailing or delivering to the personal representative a petition for the elective share within six months after the publication of notice to creditors for filing claims which arose before the death of the decedent. The Court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time of election has expired.
- (2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the estate whose interests will be finally determined by the Court.
- (3) The surviving spouse may withdraw his/her demand for an elective share at any time before entry of a final determination by the Court.
- (4) After notice and hearing, the Court shall determine the amount of the elective share and shall order its payment from the assets of the estate or by contribution as appears appropriate under the following section. If it appears that a fund or property included in the estate has not come into the possession of the personal representative, the Court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he/she would have been entitled to if relief had been secured against all persons subject to contribution.
- (5) The order or judgment of the Court may be enforced as necessary in a suit for contribution or payment.

Section 6-6-5. Effect of Election on Benefits by Will.

- (1) An election by a surviving spouse does not affect the right of such spouse to participate in a family allowance, but the value of any part of the estate passing to the surviving spouse by testate or intestate succession shall, unless renounced by the spouse in his/her petition, be counted against the elective share.
- (2) When an election to take an elective share has been made and there is insufficient property in the estate which is not specifically disposed of to pay the elective share, liability for payment of the elective share shall be equitably apportioned among the other recipients of the estate in proportion to the value of their interests therein.
- (3) Only original transferees from, or appointees of, the decedent and their donees are subject to the contributions to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him/her or to pay its value as of the time transferred in lieu of making a contribution payment.

Section 6-6-6. Omitted Spouse.

- (1) Notwithstanding the provisions of this Probate Code, if a testator fails to provide by will for the surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he/she would have received if the decedent left no will, unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will. The intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.
- (2) In satisfying a share provided by this section, the devises made by the will abate as provided in the section of this Probate Code which concerns "abatement."

Section 6-6-7. Pretermitted Children.

- (1) If a testator fails to provide in the will for any child living or born or adopted after the execution of the will, the omitted child receives a share in the estate equal in the value to that which he/she would have received if the testator had died intestate unless:
 - (a) it appears from the will that the omission was intentional; or
 - (b) when the will was executed, the testator had one or

more children and devised substantially all his/her estate to the other parent of the omitted child; or

- (c) the testator provided for the child by transfer outside the will. The intent that the transfer be in lieu of a testamentary provision must be shown by statements of the testator or from the amount of the transfer or other evidence.
- (2) If at the time of execution of the will the testator fails to provide in the will for a living child solely because he/she believes the child to be dead, the child receives a share in the estate equal in value to that which he/she would have received if the testator had died intestate.
- (3) In satisfying a share provided by this section, the devises made by the will abate as provided in the section of the Probate Code which concerns "abatement."

Section 6-6-8. Homestead Allowance.

A surviving spouse of a decedent who was domiciled on the Reservation is entitled to a homestead allowance of \$00000.00. If there is no surviving spouse, each minor dependent child of a decedent is entitled to a homestead allowance amounting to \$00000.00 divided by the number of minor dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. The homestead allowance is in addition to any share passing to the surviving spouse or minor dependent child by the will of the decedent unless otherwise provided by intestate succession or by wa of elective share.

Section 6-6-9. Exempt Property.

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled on the Reservation is entitled from the estate to a value not exceeding \$_____ in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests plus that of other exempt property is less than \$_____, or if there is not \$_____ worth of exempt property in the estate, if any, to the extent necessary to make up the \$_____ value, rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless

otherwise provided by intestate succession or by way of elective share.

Section 6-6-10. Family Allowance.

- (1) In addition to the right to the homestead allowance and exempt property, if the decedent was domiciled on the Reservation, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him/her are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid in a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the sue of the surviving spouse and minor and dependent children; otherwise, to the children or persons having their care and custody as their needs may appear. The family allowance is exempt from and has priority over all claims except for the homestead allowance.
- (2) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided by intestate succession or by way of elective share. The death of any person entitled to family allowance terminated the right to allowances not yet paid.

Section 6-6-11. Source, Determination and Documentation.

If the estate is otherwise sufficient, property specifically devised shall not be used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument of deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He/she may determine the family allowance in a lump sum not exceeding \$_____ per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the Court for appropriate relief, which relief may provide a family allowance larger or smaller than which the personal representative determined or could have determined.

TITLE XI

POLICE CODE

Section 11-1-1. Authority Over Police Function.

- (1) The Tribal Council shall appoint a Chief of Police upon such terms and conditions of employment as they shall direct.
- (2) The Chief of Police shall establish such ranks and appoint officers thereto within the Tribal Police as are deemed necessary.

Section 11-1-2. Chief of Police, Duties.

- (1) To be responsible for and have charge over all tribal police functions on the Reservation;
- (2) To be in command of all tribal law enforcement officers and employees;
- (3) To instruct, train and advise tribal police officers for the efficient maintenance of law and order on the Reservation;
- (4) To report to the Tribal Council on police activities;
- (5) To recommend to the Tribal Council persons for appointment to and dismissal from the tribal police force;
- (6) To provide police officers to the Tribal Courts to perform bailiff service, transportation of prisoners, and service Court papers;
- (7) To adopt reasonable regulations for police officers to serve as a standard of conduct to insure the efficient maintenance of law and order;
- (8) To insure cooperation with other law enforcement agencies;
- (9) To perform such other law enforcement related activities as the Tribal Council shall direct;
- (10) To designate an acting Chief of Police to serve as Chief of Police when needed.

Section 11-1-3. Appointment and Qualification of Police Officers.

- (1) Tribal police officers shall be hired upon such terms and conditions of employment as the Tribal Council shall direct. The Tribal Council shall receive the

recommendations of the Chief of Police prior to hiring anyone to be a police officer.

- (2) Individuals selected must be in sound physical and mental condition and of sufficient size and strength to perform the required duties.
- (3) They must be willing and able to attend police officer training courses as a condition to their hiring and continued employment.
- (4) They must be of high moral character and have never been convicted of a felony or Class A offense or convicted of any other offense within one year prior to appointment.
- (5) Preference in hiring shall be given to enrolled tribal members pursuant to Tribal and Federal law.
- (6) They must be a high school graduate or recipient of a G.E.D. certificate.

Section 11-1-4. Tribal Police Officers, Duties.

- (1) To obey promptly all orders of the Chief of Police, ranking police officers, or a Judge of the Tribal Court when assigned to Court duty.
- (2) To report and investigate all violations of any law or regulation coming to their attention.
- (3) To arrest all persons for violations of any law or regulations when there exists sufficient grounds for such arrest.
- (4) To lend assistance to other officers.
- (5) To prevent, whenever possible, violations of the law.
- (6) To inform themselves as to the Tribal Law and Order Code and all other laws and regulations applicable to the Reservation, and to attend such training sessions as the Tribal Council or Chief of Police may direct.
- (7) To become familiar with and practice at all times principles of good police procedure.
- (8) To use no unnecessary force or violence in making arrests, searches or seizures and to comply with all applicable Tribal Code provisions.
- (9) To abstain from the use of narcotics or the excessive use of alcohol and to refrain from engaging in any act which would reflect discredit on the Te-Moak Tribe or the Tribal Police.

- (10) To refrain from the use of profane, vulgar, insolent or offensive, language while on duty.
- (11) To report to their superior officers all deaths or accidents of a serious nature or other events or impending events of importance.
- (12) To keep all equipment furnished by the Tribe or the government in good repair and order and to immediately report the loss of any or all such property.
- (13) To obey all regulations which the Chief of Police shall adopt.

Section 11-1-5. Dismissal of Police Officers.

Police officers may be suspended or dismissed for noncompliance with the provisions of this Code or other violations of regulations or neglect of duty.

Section 11-1-6. Deputizing.

Helps to be Post Certified

- (1) Tribal police officers may be deputized by another jurisdiction to aid in the effective law enforcement on the Reservation.
- (2) Law enforcement officers and other law enforcement or security related personnel from other jurisdictions or other departments or enterprises of the Tribe may be deputized to aid in the enforcement of this Law and Order Code.

Section 11-1-7. Police Training.

It shall be the goal of the Tribal police to attract and retain experienced, professional police personnel. To this end, the Tribal Council and the Chief of Police shall establish minimum standards of training which all police officers will be required to meet. Further, the Chief of Police shall explore, schedule, and arrange periodic training and retraining programs for Tribal police officers from all available sources. Such programs shall stress not only basic police procedures and techniques, but shall also deal with crime prevention, community and public relations and other appropriate topics.

TITLE X. CRIMINAL OFFENSES

CHAPTER 1. GENERAL PROVISIONS

Section 10-1-1. Criminal Offenses Based on Voluntary Conduct.

No person shall be convicted of an offense except for conduct based on a voluntary act or the omission to perform an act of which the defendant is physically capable. Unless otherwise provided in this Code with respect to a particular offense, an offense is established only if the act or omission was intentional.

Section 10-1-2. States of Mind.

- (1) **Intentional:** A defendant's state of mind is intentional with respect to a result or to conduct if the defendant's objective is to engage in such conduct or to cause such a result.
- (2) **Negligent:** Conduct is negligent if, with respect to a result or to a circumstance, a person should be aware of a substantial and unjustifiable risk that such a result will occur or that such a circumstance exists, and his/her conduct involves a significant deviation from the standard of care that a reasonable person would observe.
- (3) **Reckless:** Conduct is reckless if, with respect to a result or to a circumstance, a person consciously disregards a substantial risk that such a result will occur or that such a circumstance exists, and the risk is of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a law abiding person would observe in the situation.

Section 10-1-3. Burden of Proof.

- (1) The prosecution has the burden of proving each element of an offense beyond a reasonable doubt.
- (2) Whenever the defendant introduces sufficient evidence of a defense to support a reasonable belief as to the existence of that defense, the prosecutor has the burden of disproving such defense beyond a reasonable doubt, unless this Code or other ordinance expressly requires the defendant to prove the defense by a preponderance of evidence.

Section 10-1-4. Ignorance or Mistake.

- (1) Ignorance or mistake as to a matter of fact or law is a defense if:

- (a) the ignorance or mistake negates the necessary mental state required for the commission of an offense; or
 - (b) the law provides that the state of mind established by such ignorance or mistake constitutes a defense.
- (2) Whenever in this Code, an offense depends on a child being below the age of _____ years of age, it is no defense that the defendant did not know the child's age, or reasonably believed the child to be older than _____ years of age. When criminality depends on the child's being below a critical age other than _____ years of age, it is an affirmative defense for the defendant to prove that he/she reasonably believed the child to be above the critical age. Age TBD by Council.

Section 10-1-5. Intoxication.

- (1) Intoxication is not a defense unless it negates an element of the offense for offenses requiring the act to be intentional.
- (2) When negligence or reckless establishes an element of the offense, self induced intoxication is no defense.
- (3) Intoxication does not, in itself, constitute a mental disease or defect within the meaning of Section 10-1-6.
- (4) Except as otherwise provided in this Code, intoxication can be proven by its external indications and no proof of specific consumption or blood alcohol or drug content is necessary, though it is admissible.

Section 10-1-6. Mental Disease or Defect.

- (1) A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, the person lacks substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law.
- (2) As used in this Section, "mental disease" does not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.
- (3) A defendant who intends to rely on a mental disease or defect as a defense must notify the prosecutor not less than two (2) weeks before trial. At the prosecutor's request, the defendant may be examined by not more than two experts qualified to evaluate the defendant's mental state.

- (4) No person with a mental disease or defect and lacks capacity to understand shall be tried so long as such incapacity lasts.

Section 10-1-7. Self Defense.

- (1) The use of necessary reasonable force is a defense when a person reasonably believes that such force is immediately necessary to protect him/herself.
- (2) A person is not justified in using force to resist arrest, execution of process, or any other performance of duty by a public servant regardless of whether the conduct of the public servant is lawful. Clearly excessive force on the part of the public servant may, however, be resisted.
- (3) A person is not justified in using force if the conduct of the person against whom force is used was provoked by the defendant with the intent to cause physical injury to that other person.

Section 10-1-8. Defense of Others.

The use of force in order to defend a third person is a defense if:

- (1) The defendant reasonably believed that the person to be protected would have been justified in using such protective force.
- (2) The defendant had not, by provocation or otherwise, forfeited the right of self defense.
- (3) The defendant reasonably believed that intervention was necessary to protect the other person.

Section 10-1-9. Defense of Property.

The use of force, but not deadly force, is a defense if the defendant reasonably believed that such force was necessary to prevent or terminate conduct which the defendant reasonably believed to be the commission or attempted commission of a crime involving trespass, damage to, or theft of property.

Section 10-1-10. Use of Deadly Force.

The use of deadly force is a defense only where the defendant reasonably believed that such force was necessary to protect him or herself or another person against death, serious bodily harm, kidnapping, or a sexual act which was compelled by force or threat.

Section 10-1-11. Criminal Complicity and Solicitation.

- (1) A person may be convicted of an offense based upon the conduct of another person when:
 - (a) acting with the state of mind sufficient for the commission of the offense, the defendant causes another person to engage in such conduct; or
 - (b) with the intent that an offense be committed, the defendant solicits, requests, commands, induces or intentionally aids another person to engage in such conduct; or
 - (c) having a legal duty as a law enforcement officer to prevent the offense, the defendant fails to make proper effort to do so.
- (2) The penalty for being an accomplice to a crime is the same as the penalty for being a principal in the crime.
- (3) A person is not liable under this Section for the conduct of another if the person terminates the complicity prior to the commission of the offense and give timely warning to law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

Section 10-1-12. Attempts.

- (1) A person is guilty of an attempt to commit a crime if the person intentionally does or omits to do anything which, under the circumstances as the defendant believes them to be, is an act or omission constituting a substantial step toward the commission of an offense.
- (2) The penalty for an attempted crime is the same as the completed crime.

Section 10-1-13. Entrapment.

No person shall be convicted of an offense if the person was induced or persuaded to engage in the conduct that constitutes the offense by law enforcement personnel employing methods of inducement or persuasion that create a substantial risk that the person will engage in the conduct only as a result of the inducement or persuasion.

CHAPTER 2. CRIMES AGAINST PERSONS

Section 10-2-1. Murder.

- (1) A person who intentionally causes the death of another human being is guilty of murder.

- (2) Murder is a Class A Tribal Felony.

Section 10-2-2. Manslaughter.

- (1) A person who recklessly causes the death of another human being is guilty of manslaughter.

- (2) Manslaughter is a Class B Tribal Felony.

Section 10-2-3. Negligent Homicide.

- (1) A person who negligently causes the death of another human being is guilty of negligent homicide.

- (2) Negligent Homicide is a Class C Tribal Felony.

Section 10-2-4. Vehicular Homicide.

- (1) A person whom, while under the influence of alcohol, drugs or any other mind altering substance, operates a motor vehicle recklessly, negligently, or carelessly and causes the death of another human being is guilty of vehicular homicide.

- (2) Vehicular homicide is a Class C Tribal Felony.

- (3) The presumptions established in the Nevada Code regarding blood alcohol content and intoxication are adopted by reference. Any chemical test administered to a defendant after an arrest, with or without the defendant's consent, shall be admissible in accordance with the rules of evidence.

- (4) For purposes of this Section, a motor vehicle is any self-propelled vehicle including, but not limited to, an automobile, truck, van, motorcycle, train, water craft, aircraft, snowmobile, off-road vehicle, or recreational vehicle.

Section 10-2-5. Causing or Aiding Suicide. May or May Not Want

- (1) A person who intentionally causes another person to commit or attempt to commit suicide by duress, deception, or aids or solicits another to commit or attempt to commit suicide, is guilty of causing or aiding suicide.

- (2) Causing or aiding suicide is a Class C Tribal Felony.

Section 10-2-6. Kidnapping.

- (1) A person is guilty of kidnapping if the person, by force, threat, or deception:
 - (a) removes another person against the person's will, from the place of residence or business, or a **substantial (any)** distance from the vicinity in which the person is found; or
 - (b) confines another person for a **significant (any)** period of time against the person's will. Where the victim is twelve (12) **(or any other minor age)** years of age or less, it shall be presumed that the removal or confinement was against the victim's will.
- (2) Any natural or adoptive parent who by force, threat, or deception, or without knowledge or agreement of the child's custodian, removes that parent's child from the physical custody of any person who has custody of the child pursuant to a Court order and keeps that child for a significant period is guilty of kidnapping. In determining whether a period of time is significant for purposes of this subsection, the Court must evaluate the surrounding facts and circumstances, including but not limited to, the age of the child and the length of previous authorized visits with the alleged offender. In a particular case, a relatively brief period may be considered significant.
- (3) Kidnapping is a **Class A, B or C Tribal Felony**.

Section 10-2-7. Harboring a Minor.

- (1) A person is guilty of harboring a minor if the person removes, confines, harbors or keeps a minor or other incompetent without the consent of a parent, guardian, or other person responsible for general supervision of the welfare of the minor or other incompetent unless the person notifies a law enforcement officer of the child's whereabouts.
- (2) Harboring a child is a Class C offense for the first conviction and a Class B offense for each subsequent conviction.

Section 10-2-8. False Imprisonment.

- (1) A person who intentionally makes or causes the unlawful arrest, imprisonment, or detention of another person is guilty of false imprisonment if the defendant knows or reasonably should have known that the arrest, imprisonment or detention is without lawful authority.

- (2) False Imprisonment is a Class ____ Tribal Misdemeanor offense.

Section 10-2-9. Rape.

- (1) A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of rape if:
- (a) the defendant compels the other person to submit by force or by any threat that would render a reasonable person incapable of resisting; or **Don't like the resisting part.**
 - (b) the defendant or someone else with the defendant's knowledge, has substantially impaired the other person's power to appraise or control that person's conduct by administering or employing, without the other person's knowledge, intoxicants, drugs or other mind altering substances with intent to prevent resistance; or
 - (c) the other person is unconscious; or
 - (d) the defendant knows that the other person submits because the other person falsely supposes the defendant to be someone else, unless the defendant is the spouse of the other person; or **What about spousal rape?**
 - (e) the other person is under the age of 12, 14, 15? ; or
 - (f) the defendant knows that the other person suffers from a mental disease or defect which renders that person incapable of understanding the nature of his or her conduct, unless the defendant is the spouse of the other person; or
 - (g) the other person is in official custody or otherwise detained in a hospital, prison, or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.
- (2) "Sexual Act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus, or contact between any foreign instrument held or controlled by the offender and the vulva, penis or the anus of the victim. For the purposes of this Code, sexual contact between the penis or a foreign instrument and the vulva, or between the penis and the mouth, or between the penis or a foreign instrument and the anus occurs upon penetration, however slight. Emission is not required.

- (3) Rape is a Class ? Tribal Felony.

Section 10-2-10. Statutory Rape.

- (1) A person eighteen (18) years of age or over who engages in a sexual act with another person who is between the ages of 12 and 15, inclusive, is guilty of statutory rape.
- (2) Statutory Rape is a Class A, B, C Tribal Felony.

Section 10-2-11. Indecent Exposure.

- (1) A person who exposes his or her genitals or other intimate body parts under circumstances likely to cause affront or alarm or arouse or gratify the sexual desires of him or herself or any other person is guilty of indecent exposure.
- (2) Indecent exposure is a Class C offense for the first conviction and a Class B offense for each subsequent conviction.

Section 10-2-12. Prostitution and Patronizing a Prostitute.

- (1) A person is guilty of prostitution or patronizing a prostitute if the person:
- (a) is an inmate of a house of prostitution, manages a house of prostitution or is otherwise engaged in sexual activity as a business; or
 - (b) solicits another person to hire a prostitute or commit an act of prostitution; or
 - (c) loiters in view of any public place with the intent of being hired to engage in sexual activity; or
 - (d) hires a prostitute to engage in sexual activity or enters or remains in a house of prostitution with intent to engage in sexual activity.
- (2) "Sexual Activity" means sexual act or sexual contact as those terms defined in Sections 10-2-9 and 10-2-14.
- (3) Prostitution or patronizing a prostitute is a Class C offense unless the prostitute is less than seventeen (17) years of age, in which case it is a Class A offense.

IS THIS LEGAL IN NEVADA?!!!

Section 10-2-13. Aggravated Assault.

- (1) A person is guilty of aggravated assault if the person:
 - (a) intentionally causes serious bodily injury to another; or
 - (b) intentionally causes bodily injury to another with a deadly weapon; or
 - (c) recklessly causes serious bodily injury to another under circumstances manifesting indifference to the value of human life.
- (2) Aggravated assault is a Class A offense.

Section 10-2-14. Sexual Assault.

- (1) A person who intentionally has sexual contact with another, or who causes such other person to have sexual contact with the defendant, is guilty of sexual assault if:
 - (a) the defendant compels the other person to submit by force or by any threat that would render a person of reasonable firmness incapable of resisting; or
 - (b) the other person is in official custody or otherwise detained in a hospital, prison or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.
- (2) "Sexual Contact" means any intentional touching of the sexual or other intimate parts of the person, whether clothed or unclothed, with no valid medical purpose.
- (3) Sexual Assault is a Class B or A offense.

Section 10-2-15. Aggravated Sexual Assault of a Child.

- (1) Any person is guilty of aggravated sexual assault of a child, if the person commits sexual assault as defined in Section 10-2-14 of this Title and the victim is:
 - (a) under the age of ?; or
 - (b) is between the age of __ and __ years of age; and the offender is the natural or adoptive parent, grandparent, sibling aunt or uncle of the victim; or had, at the time of the assault, temporary or permanent care, custody, control, or supervision over the victim; or repeatedly assaulted the victim over a period of time; or employed force or threats during the assault.

- (2) Aggravated sexual of a child is a Class A offense.

Section 10-2-16. Sexual Exploitation of a Child.

- (1) A person is guilty of sexual exploitation of a child if the person:
- (a) allows, encourages, or forces a child to solicit for or engage in prostitution; or engage in filming, photographing, videotaping, posing, modeling, or performing before live audience, where such acts involve exhibition of the child's genitals or any sexual act or conduct with the child as defined in Sections 10-2-9 and 10-2-14 of this Title; or
 - (b) engages in the distribution of films, photographs, or videotapes described in Section 10-2-14.

- (2) Sexual exploitation of a child is a Class A offense.

Section 10-2-17. Abuse of a Minor or Incompetent.

- (1) A person having the responsibility for a minor or incompetent is guilty of abuse if the person:
- (a) causes the minor or incompetent to suffer physical or emotional harm as a result of any person inflicting physical or emotional injury upon the minor or incompetent person; or
 - (b) fails to make reasonable efforts to prevent the infliction of physical or emotional injury upon the child or incompetent person.
- (2) Physical or emotional injury includes excessive corporal punishment or acts of sexual abuse or molestation.
- (3) Abuse of a minor or incompetent is a Class B offense for the first conviction and a Class A offense for each subsequent conviction.

Section 10-2-18. Neglect of a Minor or Incompetent.

- (1) A person having the responsibility for the care and welfare of a minor or incompetent person who neglects that minor or incompetent person is guilty of neglect.
- (2) Neglect means failure to provide the minimal care which a reasonably prudent person would provide in the circumstances for the subsistence, education, and welfare of the minor or incompetent person.

- (3) Minimal care includes adequate food, clothing, shelter, medical care, and daily supervision. In determining whether minimal care has been provided, the Court shall apply the standards prevailing in the community.
- (4) A minor or incompetent person shall not be considered neglected for the purposes of this section if the failure to provide minimal care is due to the person's indigence, incarceration, hospitalization, or physical or mental incapacity.
- (5) Neglect of a child is a Class B offense for the first conviction and a Class A offense for each subsequent conviction.

Section 10-2-19. Abandonment of a Minor or Incompetent Person.

- (1) A person having the responsibility for the care and welfare of a minor or incompetent person who abandons that individual is guilty of abandonment.
- (2) A minor or incompetent person is abandoned if the person with legal responsibility for the minor or incompetent person is unknown or, if known, has made no reasonable effort to care for or arrange substitute care for the child for a period of not less than six (6) months.
- (3) Abandonment of a child is a Class B offense for the first conviction and a Class A offense for each subsequent conviction.

Section 10-2-20. Simple Assault.

- (1) A person is guilty of an assault if the person:
 - (a) intentionally causes bodily injury to another; or
 - (b) recklessly or negligently causes bodily injury to another with a deadly weapon; or
 - (c) attempts by physical menace to put another in fear of serious bodily harm; or
 - (d) by physical menace causes another to harm him or herself.
- (2) Where the victim of an assault is a public official or employee, it is no defense that the action of the public official or employee is unlawful so long as the official reasonably appeared to be acting within the scope of his or her official duties.

- (3) Simple assault is a Class B offense.

Section 10-2-21. Domestic Abuse.

- (1) A person is guilty of domestic abuse if the person:
- (a) intentionally causes bodily injury to a family member or household member; or
 - (b) attempts by physical menace to put a family member in fear of serious bodily harm; or
 - (c) by physical menace causes a family member to harm him or herself.
- (2) For the purposes of this Section, "family member" means spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the accused.
- (3) Domestic abuse is a Class B offense.
- (4) For any first conviction of domestic abuse, the Court may order mandatory counseling as part of the sentence. The Court shall order mandatory counseling as part of the sentence for each subsequent conviction for domestic abuse.
- (5) Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, the officer must follow provision of Title 8, Mandatory Arrest Section. If the officer does not make an arrest, a written report with the Chief of Police must be filed setting forth the reason the officer did not make an arrest.

Section 10-2-22. Notice of Rights to Victim of Domestic Violence.

Whenever a law enforcement officer arrests a person for domestic abuse as defined in Section 10-2-21, the officer shall advise the victim, if present, of the availability of a shelter or other services in the community and give the victim a copy of the following statement:

"IF YOU ARE A VICTIM OF DOMESTIC ABUSE, the tribal prosecutor can file criminal charges against your abuser. You have the right to go to court and file a petition requesting one or more of the following civil orders for relief:

- (1) an restraining order against your abuser.

- (2) an order directing your abuser to leave your house.
- (3) an order awarding temporary custody of minor children.
- (4) an order directing the abuser to pay child support.

CHAPTER 3. CRIMES AGAINST PRIVATE PROPERTY

Section 10-3-1. Arson.

- (1) A person who intentionally starts or maintains a fire or causes an explosion with intent to destroy or damage a building or occupied structure, motor vehicle, field, crop or standing timber of another is guilty of arson.
- (2) A person who burns grass thatch, conducts or participates in a prescribed burn of timbered land, or participates in burning otherwise authorized by law, is not guilty of arson.
- (3) Arson is a Class A offense.

Section 10-3-2. Burglary.

- (1) A person who enters or remains unlawfully in a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein is guilty of burglary, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter.
- (2) Burglary is a Class A offense.

Section 10-3-3. Criminal Trespass.

- (1) A person is guilty of criminal trespass if the person knowing that he or she is not licensed or privileged to do so;
 - (a) enters or by fraud or stealth remains in any building or occupied structure, or separately secured or occupied portion thereof; or
 - (b) enters or remains in any place as to which notice against trespass is given by actual communication to the defendant; posting in a manner reasonably likely to come to the attention of the intruders; or fencing or other enclosure manifestly designed to exclude intruders; or

- (c) intentionally allows livestock to occupy or graze on the lands of another person.
- (2) Criminal trespass is a Class B offense if the defendant enters or remains in any building or occupied structure. Otherwise, it is a Class C offense.

Section 10-3-4. Theft.

- (1) A person is guilty of theft if the person:
 - (a) intentionally takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another with intent to deprive the owner thereof; or
 - (b) intentionally obtains the property of another by misrepresentation or deception; or
 - (c) intentionally obtains the property of another by threat; **sounds like robbery** may not need, or
 - (d) receives, retains or disposes of the property of another knowing that it has been stolen or believing that it has probably been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner; **sounds like receiving stolen property** or
 - (e) comes into control of property of another that the defendant knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with intent to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it; or
 - (f) intentionally obtains services, known by the defendant to be available only for compensation, by avoiding payment for the services, or having control over the disposition of services of another to which he or she is not entitled, knowingly diverts those services to the defendant's own benefit or to the benefit of another not entitled thereto; or
 - (g) intentionally disposes of, uses, or transfers any interest in property which has been entrusted to the defendant as a parent or guardian of a minor, or for any other reason, for any purpose other than the purpose or purposes for which the property was placed in trust; or

- (h) intentionally misbrands or alters any brand or mark on any livestock of another person.
- (2) "Theft" as provided in this Section constitutes a single offense embracing the offenses previously known as embezzlement, extortion, fraud, larceny, receiving stolen property, misbranding, and the like.
- (3) Theft is a Class A offense if the amount involved exceeds one hundred dollars (\$100.00), otherwise it is a Class B offense.

Section 10-3-5. Robbery.

- (1) A person is guilty of robbery if the person, in the course of committing or attempting to commit a theft or while fleeing from the commission or attempted commission of a theft:
 - (a) inflicts or attempts to inflict bodily injury upon another; or
 - (b) threatens or menaces another with immediate bodily injury.
- (2) Robbery is a Class A offense.

Section 10-3-6. Criminal Mischief.

- (1) A person is guilty of criminal mischief if the person intentionally or recklessly:
 - (a) damages intangible property of another; or
 - (b) tampers with tangible property of another so as to endanger person or property.
- (2) Criminal mischief is a Class B offense if the defendant intentionally causes pecuniary loss in excess of one hundred dollars (\$100.00). Otherwise, it is a Class C offense.

Section 10-3-7. Injury to Public Property.

- (1) A person is guilty of injury to public property if the person, without proper authority, intentionally, recklessly or negligently:
 - (a) uses or injures any tribal or other public property; or
 - (b) causes a substantial interruption or impairment of

a public service.

- (2) Injury to public property is a Class B offense if the defendant causes pecuniary loss in excess of one hundred dollars (\$100.00). Otherwise, it is a Class C offense.

Section 10-3-8. Issuing Bad Checks.

- (1) A person is guilty of issuing bad checks if the person issues any check, draft or order upon any bank or other depository knowing that there are not sufficient funds in the person's account to pay such check, draft or order in full upon presentation.
- (2) Issuing bad checks shall be a Class C offense, except that a third or subsequent conviction to pay shall be a Class B offense.

Section 10-3-9. Forgery.

- (1) A person is guilty of forgery if the person, with intent to deceive or harm the Tribe or any other person:
 - (a) knowingly and falsely makes, completes, executes, authenticates, issues, transfers or alters any writing; or
 - (b) knowingly utters a forged writing.
- (2) Forgery is a Class A offense if the amount involved exceeds one hundred dollars (\$100.00). Otherwise, it is a Class B offense.

CHAPTER 4. CRIMES AGAINST THE PUBLIC ORDER

Section 10-4-1. Carrying a Concealed Weapon.

- (1) A person is guilty of carrying a concealed weapon if the person carries, conceals on his or her person, any of the following weapons, unless they are carried with specific governmental approval:
 - (a) a blackjack, billy, bludgeon, metal knuckles, knife with a blade over six (6) inches long, or any other sharp or dangerous instrument usually used in the attack or defense of a person; or
 - (b) a gun or dangerous firearm, whether loaded or unloaded.
- (2) Carrying a concealed weapon is a Class B offense. In

addition to the penalty prescribed for such an offense, any person convicted of carrying a concealed weapon may be ordered by the Court to forfeit any such weapon to the Tribe.

Section 10-4-2. Possession of Explosives.

- (1) A person is guilty of possession of explosives if the person possesses, transports, or controls any dangerous explosive, unless such explosive is possessed in the performance of or to effect a lawful purpose.
- (2) Possession of explosives is a Class B offense. In addition to the penalty prescribed for such an offense, any person convicted of possession of explosives may be ordered by the Court to forfeit any such explosives to the Tribe.

Section 10-4-3. Use of Dangerous Weapons by Children.

- (1) A parent, guardian, or other person having charge or custody of any minor under 15 years of age, who knowingly allows such child to carry or use in public any dangerous weapon as defined in Section 10-4-1, except when such child is in the company and under the direct control of such parent, guardian, or other adult person authorized by the parent or guardian, is guilty of use of dangerous weapons by children.
- (2) Use of dangerous weapons by children is a Class B offense. In addition to the penalty prescribed for such offense, the Court may order forfeiture of the weapon to the Tribe.

Section 10-4-4. Unlawful Discharge of Firearms.

- (1) A person is guilty of unlawful discharge of firearms if:
 - (a) the person discharges firearms within five hundred (500) yards of an occupied building or structure unless entitled to possession of the building or structure or authorized to discharge firearms by a person entitled to possession; or
 - (b) the person discharges firearms within band or community limits.
- (2) Unlawful discharge of firearms is a Class B offense. In addition to the penalty prescribed for such an offense, any person convicted of this offense, may be ordered by the Court to forfeit any such firearms to the Tribe.

Section 10-4-5. Production, Sale, Possession or Use of Drugs.

- (1) A person is guilty of unlawful production, sale, possession or use of drugs if the person:
 - (a) knowingly produces, sells or possesses marijuana or any narcotic drug, including any substance containing opium, coca leaves, any opiate or any substance, compound or derivative thereof, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to above but not including the isoquinoline alkaloids of opium; or
 - (b) inhales the fumes of any gasoline, airplane glue, or any other similar noxious substance for the purpose of producing intoxication. **Need separate offense for this. See "Inhaling Toxic Vapors" or "Abuse of Psychotoxic Chemicals"**
- (2) Unlawful sale of drugs is a Class A offense. Unlawful production, possession or use of drugs is a Class B offense.
- (3) There shall be a mandatory sentence of six (6) months imprisonment and a two thousand, five hundred dollar (\$2,500) fine for the first conviction under this Section for the sale of drugs, and a mandatory sentence of one (1) year imprisonment and a five thousand dollar (\$5,000) fine for the second and each subsequent conviction for the sale of drugs.

Section 10-4-6. Peyote Exception.

A person is not guilty of unlawful production, sale, possession or use of drugs if the person sells, possesses or uses peyote in observance of the person's bona fide religion.

Section 10-4-7. Possession of Open Vessel in Public.

- (1) A person is guilty of unlawful possession of an open vessel containing an intoxicating beverage in a public place if the person possesses in a public place on the Reservation an open vessel containing an intoxicating beverage, or causes or allows to be opened or broken in a public place a vessel containing an intoxicating beverage, or consumes in a public place any portion of an intoxicating beverage contained in such an open vessel.
- (2) For purposes of this Chapter, "intoxicating beverages" shall mean any potable compound that contains more than one-half of one percent (.5%) alcohol.

- (3) The term "public place" shall include, but not limited to, streets, parks, playgrounds, and other unenclosed areas, and schools, stores, and tribal buildings. It shall not include restaurants or other establishments that are permitted by law to serve intoxicating beverages.

- (4) Unlawful possession of an intoxicating beverage in a public place is a Class C offense.

Need to include within a moving vehicle on public highways.

Section 10-4-8. Bribery.

- (1) A person is guilty of bribery if the person intentionally offers, gives, or agrees to give to another, or solicits, accepts, or agrees to accept from another, anything of value as consideration:

- (a) to influence the recipient's official action as a public servant; or
- (b) to induce the recipient's violation of a known legal duty as a public servant.

- (2) Bribery is a Class A offense.

Section 10-4-9. Election Tampering.

- (1) A person is guilty of election tampering if the person:

- (a) coerces, threatens, injures or intimidates another person with respect to voting, qualifying to vote, qualifying or campaigning as or for a candidate for elective office, or qualifying or acting as an election official, in any primary, special, or general election of the Tribe; or
- (b) in connection with any election of the Tribe, makes or induces any false voting registration; or
- (c) in connection with any election of the Tribe, offers, gives, or agrees to give anything of pecuniary value to another person to induce the recipient or another person to vote or withhold a vote for or against any candidate or issue; or
- (d) solicits, accepts, or agrees to accept anything of pecuniary value as consideration for conduct prohibited under this section; or
- (e) otherwise obstructs or interferes with the lawful conduct of an election of the Tribe or registration

therefor.

- (2) Election tampering is a Class A offense.

Section 10-4-10. Obstructing Justice.

- (1) A person is guilty of obstructing justice if the person, knowing that another person has or may have committed a criminal offense, intentionally interferes with, hinders, delays, or prevents the discovery, arrest, prosecution, conviction, or punishment of such other person by:
 - (a) harboring or concealing such other person;
 - (b) providing such other person with a weapon, money, transportation, disguise, or other means of avoiding discovery or apprehension;
 - (c) warning such other person of impending discovery or apprehension, unless the warning is intended to induce such person to give him or herself up to law enforcement officers; or
 - (d) giving false information or a false report to a law enforcement officer, knowing such information or report to be false.

- (2) Obstructing Justice is a Class B offense.

Section 10-4-11. Perjury.

- (1) A person is guilty of perjury if the person, in any official proceeding of the Tribe, makes a false statement or interpretation under oath or equivalent affirmation, or swears or affirms the truth of a statement or interpretation previously made when the statement or interpretation is material and the defendant does not believe it to be true.
- (2) Falsification is material if it could have affected the course of the outcome of the proceeding.
- (3) Perjury is a Class A offense.

Section 10-4-12. Criminal Contempt.

- (1) The Tribal Court may punish for contempt of its authority the following offenses:
 - (a) misbehavior of any person in the presence of or so near the Court that the misbehavior obstructs the administration of justice; or

- (b) disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

- (2) Criminal contempt is a Class B offense.

Section 10-4-13. Resisting Arrest.

- (1) A person is guilty of resisting arrest if the person, with intent to prevent a law enforcement officer from making an arrest:
 - (a) flees from a law enforcement officer after being told by an officer that the person is under arrest; or
 - (b) creates a substantial risk of bodily harm to the officer or any other person.
- (2) The Court may require the guilty defendant to make restitution to the law enforcement officer for property of the officer that was damaged as a result of the defendant's resistance.
- (3) A person is guilty of an offense under this section regardless of whether the arrest resisted is lawful or unlawful. Clearly excessive force may, however, be resisted.
- (4) Resisting arrest is a Class B offense.

Section 10-4-14. Escape.

- (1) A person who unlawfully removes him or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period is guilty of escape.
- (2) Official detention does not include supervision of probation or parole, or constraint incidental to release on bail.
- (3) Escape is a Class B offense.

Section 10-4-15. Disorderly Conduct.

- (1) A person is guilty of disorderly conduct if the person, with intent to harass, alarm or annoy another person, or in reckless disregard of the fact that another person is harassed, annoyed or alarmed by his or her behavior:
 - (a) engages in fighting, or in violent or threatening behavior; or

- (b) makes unreasonable noise; or
- (c) uses abusive or obscene language, or makes an obscene gesture in a public place; or
- (d) obstructs vehicular or pedestrian traffic, or the use of a public facility; or
- (e) persistently follows another person in or about a public place or places; or
- (f) creates a hazardous, physically offensive, or seriously alarming condition by any act which serves no legitimate purpose.

(2) Disorderly conduct is a Class B or C offense.

Section 10-4-16. Cruelty to Animals.

- (1) A person who intentionally, recklessly or negligently subjects any animal to cruel mistreatment is guilty of cruelty to animals.
- (2) Cruelty to animals is a Class C offense.

Section 10-4-17. Gambling.

- (1) A person is guilty of gambling if the person:
 - (a) conducts a wagering pool or lottery for the person's profit; or
 - (b) receives wagers for or on behalf of another person for the person's profit; or
 - (c) alone, or with others, owns, controls, manages, or finances a gambling business; or
 - (d) knowingly leases or otherwise permits a place to be regularly used to carry on a gambling business or maintain a gambling house; or
 - (e) maintains a coin operated gaming device for the person's profit.
- (2) Gambling does not include:
 - (a) lawful Tribal business operations; or
 - (b) lawful State sanctioned gambling.
- (3) Gambling is a Class B offense.

Section 10-4-18. Contributing to the Delinquency of a Minor.

- (1) Any person, including a parent or other person with lawful custody of a minor, who intentionally, negligently or recklessly causes, encourages, contributes to or aids a minor in committing a delinquent act or status offense, shall be guilty of contributing to the delinquency of a minor.
- (2) Contributing to the delinquency of a minor is a Class A or B or C offense.

Section 10-4-19. Failure to Support Dependent Persons.

- (1) A person who fails to provide support which the person can provide and knows he or she is legally obligated to provide to a child born in or out of wedlock, a spouse, or other dependent is guilty of failure to support dependent persons.
- (2) Failure to support dependent persons is a Class C or B offense for the first conviction and a Class B offense for each subsequent conviction.

Section 10-4-20. Failure to Send a Child to School.

- (1) A person who, without justification or excuse, fails to send any minor child under the person's care to school is guilty of failure to send a child to school.
- (2) For the purposes of this Section, a child is any person under the age of 18 or 16, who is or would be enrolled in the first through twelfth grades. Students must remain in school until they are eighteen (18) or 16?, years of age or receive a high school diploma or its equivalent.
- (3) Failure to send a child to school is a Class C offense for the first conviction and a Class B offense for each subsequent conviction.

Section 10-4-21. Minor in Possession of Intoxicating Beverages.

- (1) A person who is under the age at which it is legal to possess intoxicating beverages under the law of Nevada and purchases or has in his or her possession an intoxicating beverage is guilty of minor in possession of intoxicating beverages.
- (2) Minor in possession of intoxicating beverages is a Class C offense. In addition to the penalty prescribed for such an offense, all alcoholic beverages possessed in violation of this Section will be forfeited to the Tribe

and disposed of in accordance with the order of the Court.

Section 10-4-22. Curfew.

- (1) A parent or legal guardian of a child under the age of 18 shall cause such child to be within a private residence and off the streets between the hours of 00:00 p.m. and 0:00 a.m. on weekdays, Sunday through Thursday and 00:00 a.m. and 0:00 a.m. on weekends Friday and Saturday, except when the child is:
 - (a) accompanied by the parent or guardian;
 - (b) is attending or returning from a school, community church, or tribal function in a manner authorized by a parent or guardian;
 - (c) is seeking emergency assistance; or
 - (d) is living independent of parental or other custodial care and responsibility.

Section 10-4-23. Littering.

- (1) A person is guilty of littering if the person abandons, or deposits upon the land of another or any tribal or public property, highway, street, or road without the consent or other lawful permission of the owner any destructive, dangerous, unhealthful, or unsightly material, including, but not limited to, garbage, trash, foodstuffs, glass, nails, tack, wire, cans, motor vehicle parts, and animal carcasses.
- (2) Littering is a Class C offense. Any person convicted of littering may also be ordered by the Court to immediately remove any destructive, injurious or unsightly material from the public right of way, road or highway.

Section 10-4-24. Improper Waste and Sewage Disposal.

- (1) A person is guilty of improper waste and sewage disposal if the person:
 - (a) disposes of any body waste, garbage, trash, or other waste in a manner that contaminates any underground water supply used for domestic purposes; or pollutes or contaminates the waters of any bathing area or any stream or body of water used for public or domestic water supply purposes or for recreational purposes.

- (b) owns or operates any sewage, garbage, or refuse disposal facility, water wells, pumps or plumbing equipment and fails to operate, maintain or repair the facilities or equipment in a sanitary manner such that the operation creates a public health hazard.
- (2) A person found guilty of improper waste and sewage disposal shall be given a reasonable, specified time to make the necessary corrections to remedy the situation. No sentence shall be imposed during the specified time. A person who fails to remedy the situation within the specified time shall be sentenced.
- (3) Each day the condition exists after the expiration of the period allowed for remedying the situation shall constitute a separate offense.
- (4) Improper waste and sewage disposal is a Class C offense.

Section 10-4-25. Interference With the Use of Water.

- (1) A person is guilty of interference with the use of water if the person:
 - (a) interferes with or alters the flow of water in any stream, river, ditch, canal or lateral without lawful authority or permission to do so;
 - (b) knowingly breaks, injures, alters or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so;
 - (c) diverts irrigation water without lawful authority or in violation of the right of another person to do so; or
 - (d) pollutes or befouls any water.
- (2) Interference with the use of water is a Class B offense.

Section 10-4-26. Use of Fireworks.

- (1) A person is guilty of use of fireworks if the person purchases, possesses, sells, distributes, transport, activates, ignites or detonates any firecracker or other firework type device that is capable of or intended to explode, ignite, become self propelled, release a projectile, spark or other ignited or fused object or manifestation, or in any way releases sound or light by

virtue of its burning or exploding.

- (2) A person does not violate this section if the person:
 - (a) uses or ignites hand held sparkler type devices such that they burn openly and singly;
 - (b) uses toy caps and guns in the intended fashion; or
 - (c) uses or ignites fireworks at a patriotic, religious or tribal ceremony, gathering, or celebration in a safe manner under a permit issued by the Tribal Council prior to the purchase and use of the fireworks.
- (3) Use of fireworks is a Class C offense.

Section 10-4-27. Communicating a/or Terroristic Threats.

- (1) A person is guilty of community a threat if the person with the intent to terrify, intimidate, threaten, or harass, communicates with any person and:
 - (a) uses obscene language;
 - (b) suggests the performance of sexual acts;
 - (c) threatens to inflict injury or physical harm on the person or property of any person; or
 - (d) transmits obscene material of a pictorial or photographic nature.
- (2) For purposes of this Section, obscene means any clearly offensive representation or description of sexual acts as defined in Section 10-2-9, either actual or simulated, or any clearly offensive representation or description of masturbation, excretory functions, or exhibition of the genital which, taken as a whole, appeals to an interest in sex considered lewd or indecent by prevailing community standards, and which lacks serious literary, artistic, political, or scientific value.
- (3) Communicating a threat is a Class B or C offense.

CHAPTER 5. PENALTIES

DEPENDS ON WHETHER THE CONSTITUTION IS CHANGED TO REFLECT CHANGES IN THE INDIAN CIVIL RIGHTS ACT REGARDING INCARCERATION.

CHAPTER 4. POST TRIAL PROCEEDINGS

Section 2-4-1. Sentencing.

- (1) Before sentencing, the Judge may commit the defendant to jail or may continue or alter the bail in accordance with the procedures prescribed in this Chapter.
- (2) Sentence shall be imposed within a reasonable amount of time after either the conviction by the Court or jury, or upon a plea of guilty. Before imposing sentence, the Court shall allow counsel to speak on behalf of the defendant personally and ask if defendant wishes to make a statement on there own behalf. The defendant may present any information in mitigation of punishment. The prosecutor shall have an equal opportunity to speak to the Court, if it is desired.
- (3) Any Indian person who has been convicted in the Tribal Court of a criminal offense may be sentenced to one or a combination of the following penalties:
 - (a) **Imprisonment:** The period for imprisonment shall not exceed the maximum permitted by the Code provision defining the offense.
 - (b) **Fine:** A money fine in an amount not to exceed the maximum permitted by the Code provision defining the offense. At the Judges discretion, the defendant may be given the opportunity to do community service in-lieu of the fine.
 - (c) **Restitution:** Restitution or compensation for the injured party by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.
 - (d) **Treatment:** Defendants may be ordered to complete substance abuse treatment in-lieu of imprisonment. Parents, guardians and custodians of children who are convicted of offenses against children may be ordered to seek such therapy, treatment, or instruction as will assist in preventing recurrence of the conduct that formed the basis of the offense. Such treatment or therapy may be ordered in-lieu of imprisonment, with the condition that if the offender fails to seek and complete the treatment as ordered, the sentence of imprisonment shall be reinstated.
- (4) The Court may suspend or commute some or all of the sentence imposing a fine or imprisonment and grant

probation.

- (5) A defendant held in jail pending the imposition of sentence shall be given credit for time served.
- (6) If, solely because of indigency, a convicted offender is unable to pay immediately a money fine assessed under this Section or costs assessed under other provisions of this Code, the Court shall allow the defendant to make reasonable installment payments to the Clerk of the Court at specified intervals until the sum is paid. If such payments are not made, the Court may find the defendant in contempt of court and imprison accordingly.
- (7) In determining the character and duration of the sentence to be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the defendant has attempted to make amends, and shall give due consideration to the extent of the defendant's financial resources.

Section 2-4-2. Probation.

- (1) **Granting Probation:** After conviction of an offense, the defendant may be placed on probation, under such terms and conditions as the Court deems just, taking into consideration any prior criminal record of the defendant, his/her background and characteristics, financial condition and any other circumstances helpful in determining the advisability of probation. In cases where the defendant has not previously been convicted of an offense under this Code, the Court may in its discretion suspend the sentence imposed and release the defendant on probation under a signed pledge by the defendant of good conduct for the duration of the sentence.
- (2) **Violation of Probation:** If any person violates the terms and conditions of probation, the Court may, after giving the defendant notice and the opportunity for a hearing in open court, revoke or alter the terms of probation, and may, as a penalty for violation of the probation, impose an additional fine or imprisonment.

Section 2-4-3. Forfeiture of Weapons.

Any person owning and using a firearm, or any sharp or dangerous weapon, in the commission of an offense shall forfeit such weapon to the Tribe as part of the sentence. Upon order of the Court, such weapon shall be destroyed, or sold at public sale

after appropriate public notice, pursuant to the direction of the Court.

Section 2-4-4. Notification of Right to Appeal.

Following the imposition of judgment of guilty, except upon a plea of guilty, the Court shall inform the defendant of the right to appeal.

Section 2-4-5. Stay of Judgment Pending Review.

- (1) At the discretion of the Court, a sentence of imprisonment may be stayed if an appeal is taken under the procedures set forth in this Code. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent incarcerated counted towards the sentence in the matter under appeal.
- (2) A sentence to pay a fine may be stayed pending appeal upon motion of the defendant, but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirements for paying such. In the alternative, an appropriate bond may be required.
- (3) An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

TITLE IV. TE-MOAK JUVENILE CODE

CHAPTER 1. GENERAL PROVISIONS

Section 4-1-1. Jurisdiction.

The Te-Moak Tribal Court shall have exclusive original jurisdiction over all matters involving Indian children covered by this Title.

Section 4-1-2. Definitions.

- (1) **Child:** Any Indian 17 years old and younger.
- (2) **Abused Child:** A child who has suffered or is likely in the immediate future to suffer serious physical or emotional harm as a result of a parent or custodian inflicting or failing to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment or an act of sexual abuse or molestation.
- (3) **Abandoned Child:** A child whose parent or custodian is not identifiable or, if known, has made no reasonable effort to care for, or arrange substitute care for the child for a period of six months or more.
- (4) **Neglected Child:** A child:
 - (a) whose parent or custodian fails to provide the minimal care which a reasonably prudent parent would provide in the circumstances for the subsistence, education, and welfare of the child; or
 - (b) who has special physical or mental conditions for which the child's parent or custodian neglects or refuses to provide a reasonable level of special care; or
 - (c) whose parent or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity.
 - (d) A child shall not be deemed neglected if the reason for failing to provide adequate care for the child is the indigence of the parent or guardian. Minimal care shall mean provision of adequate food, clothing, shelter, medical care, and day to day supervision. In determining whether minimal care has been provided, the Court shall apply the standards prevailing in the community.
- (5) **Status Offender:** A child:

- (a) who is subject to compulsory school attendance and is habitually truant from school without justification; or
 - (b) who has committed an offense committable only by children; or
 - (c) who is habitually disobedient to the reasonable and lawful commands of the parent or custodian; or
 - (d) who habitually runs away from home; and
 - (e) who the Court determines is in need of rehabilitation.
- (6) **Delinquent Child:** A child who commits an act which if committed by an adult would be in violation of any provision of Title ____ of this Code. Traffic offenses shall be deemed delinquent acts only if committed by an individual under 16 years of age.
- (7) **Parent:** The biological parent of a child, or any person who has lawfully adopted a child. Parent shall not mean the unwed father of a child where paternity has not been established or acknowledged. Parent shall not mean any person whose parent-child relationship has been lawfully terminated.
- (8) **Custodian:** A person or agency, other than the parent, to whom the legal custody of a child has been granted by the order of a court of competent jurisdiction or who is acting in loco parentis.
- (9) **Detention:** The temporary, secure custody of a child in facilities designated by the Court, pending a final disposition of a petition.
- (10) **Shelter Care:** The temporary care of a child in a licensed child care facility designated by the Court, pending final disposition of a petition under Chapter 3 of this Title.
- (11) **Diversion:** A course of remedial action taken in matters arising under this Title designed to avoid formal court action and to serve the best interests of the child involved.
- (12) **Probable Cause:** Such facts and circumstances as would convince a reasonable person.

Section 4-1-3. Notice.

Except to the extent that a specific provision of this Title

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otherwise requires, whenever the Court is required to give notice under the provisions of this Title, notice shall be given in the following manner:

- (1) **How Given:** Notice shall be served in person by a law enforcement officer or other appointee of the Court. Alternatively, notice may be sent by certified mail, return receipt requested. If notice cannot be provided by either of these methods, notice may be by publication in either three consecutive editions of a tribal or Reservation newspaper of general circulation, or by publication at least once each week for three weeks in a newspaper of general circulation published off the Reservation in the area in which the person to be served with notice was last known to reside. In addition, whenever the Court deems it advisable and, in any event, whenever fewer than four days advance notice is to be given, the Court shall also attempt to provide notice by telephone.
- (2) **To Whom Given:** Notice shall be served upon the child, the parents or custodian, any person authorized to represent the child, and any other persons designated by the Court.
- (3) **Content of Notice:** Notice shall be given of the date, time, place, and subject matter of the hearing. Except where notice by telephone or publication, a copy of the petition or other document initiating the proceeding shall, whenever feasible, be attached to the notice. The notice shall also specify the rights of the parties as follows:
 - (a) The child and the parents or custodian have the right to retain counsel at their own expense, be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses.
 - (b) The child need not be a witness against, or otherwise incriminate him or herself.
 - (c) If the child or other parties would like to be represented by counsel but cannot afford to pay for counsel, they can obtain from the Court a listing of available services that may provide representation.

Section 4-1-4. Traditional Te-Moak Law.

The Court shall follow the traditional Te-Moak ways respecting child care and family relations, except if these traditional ways are inconsistent with the express provisions of this Title.

TAKING A CHILD INTO CUSTODY BEFORE A COURT HEARING

Section 4-2-1. Protective Custody.

- (1) Any law enforcement officer who has probable cause to believe a child is a delinquent child and is likely to commit other delinquent acts unless detained may take the child into detention. At such time, the officer shall warn the child that he or she has the right to remain silent; that anything said can be used against the child in Court; that he or she has the right to the presence of a lawyer during questioning; and that if he or she cannot afford a lawyer, the Court will inform him or her of any available services that provide legal representation. The child may be placed in an institution for delinquent children.
- (2) Status offenders shall not be taken into custody without a court order.
- (3) Any licensed physician, law enforcement officer, or youth court counselor who has probable cause to believe a child is neglected or abused and will suffer physical or emotional harm if not immediately removed from the home may place the child in shelter care. Such child may be placed in a private home or temporary foster home or institution.
- (4) In no event shall a child be kept in custody without a court order for more than seventy two (72) hours.

Section 4-2-2. Application to Court.

- (1) Any law enforcement officer, licensed physician, or youth court counselor who takes a child into custody without a court hearing shall:
 - (a) immediately notify the Court and make a good faith effort to notify the parents of the child; and
 - (b) within twenty four (24) hours submit to the Court a petition under this Title.
- (2) If the child is taken into custody on a weekend or holiday, the individual taking the child into custody shall have 24 hours from the start of the first subsequent work day to file a petition in Court.

CHAPTER 3. COURT PROCEDURES

Section 4-3-1. Petitions.

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CHAPTER 3. COURT PROCEDURES

Section 4-3-1. Petitions.

- (1) Any person may submit to the Court a petition to have any

child subject to the jurisdiction of the Court declared abused, neglected, abandoned, delinquent or a status offender. Such petition shall include:

- (a) the name, address, and telephone number of the applicant, the child and, if known, the child's parents or custodian;
 - (b) the reason why the applicant believes the child is abused, neglected, abandoned, delinquent or a status offender;
 - (c) supporting credible evidence, including affidavits or written statements from social workers, other child care professionals, or members of the community.
- (2) The petition shall indicate whether the child is in protective custody.

Section 4-3-2. Release From Protective Custody.

- (1) Where the child is in protective custody, the Court shall immediately direct a youth court counselor to review the petition and perform a preliminary investigation. The purpose of the investigation shall be to determine whether the preventive detention is still justified under the standards set forth in this Title. The juvenile officer shall make a recommendation to the Court, which shall order the child released to the custody of the parent or custodian or order continued protective custody pending the initial hearing. The Court may also order continued protective custody pending completion of the preliminary investigation.
- (2) The youth counselor shall conduct a social study with respect to each petition. Such study shall be undertaken before the initial hearing if possible, and in all cases before the fact finding hearing. The social study shall, if possible, include interviews of the child, parents or custodian and investigation of the conditions in the home. The juvenile officer or other personnel authorized to conduct a study shall submit the social study to the Court and to the child's parents or custodian and any other representative of the child appointed by the Court.
- (3) In the case of a child who is the subject of a petition based on abuse, abandonment, or neglect, the Court shall order that a licensed physician examine the child.
- (4) The Court may order emergency medical or surgical treatment which is immediately necessary for a child concerning whom a petition under this Section has been filed.

(5) Informal Resolution:

- (a) Abandoned, neglected, or abused children and status offenders: The juvenile officer may recommend counseling, treatment, or such other disposition of an abandoned, neglected, or abused child or status offender which in the officer's opinion is in the best interests of the child. Such recommendations shall be implemented, without Court action, only upon the consent of the parents or custodian with the knowledge that consent is voluntary. Upon receiving consent, the juvenile officer shall inform the Court the case has been resolved informally. Informal resolution shall not include any disposition which separated the child from the parent or custodian. Upon successful completion of the recommended program, the case shall be dismissed. No diversion program shall exceed six (6) months.
- (b) Delinquent Children: In cases where the child has no previous record of delinquency and the child is alleged to have committed a Class ___ offense, the juvenile officer may recommend a diversion program, including counseling or treatment, in the best interests of the child. The Court may in its discretion, approve such recommendation without a hearing. A child who successfully completes the diversion program shall not be deemed a delinquent for any purpose. No diversion program shall exceed six (6) months.

Section 4-3-3. Initial Hearing.

- (1) After receiving a petition, the Court shall immediately schedule an initial hearing, to be held immediately if possible and in all cases within 72 hours of the time a child is placed in protective custody and within 7 days if the child is not in protective custody. The Court shall provide notice of the hearing in accordance with this Title.
- (2) Prior to the initial hearing, the Court shall order that the child be interviewed by a youth counselor or other appropriate tribal personnel.
- (3) If it appears to the Court, upon a sworn affidavit or upon examination of witnesses, if required by the Court, that there is probable cause to believe that a child is being detained or ill treated in any place within the jurisdiction of the Court, the Court may issue a warrant authorizing a law enforcement officer or youth court counselor to search for the child. Upon serving such warrant, the officer making the search may enter the

house or premises, using force as necessary, to remove the child.

- (4) The initial hearing shall be conducted informally and shall be closed to the public.
- (5) If, after the initial hearing, the Court determines that there is probable cause to believe that the child has been abused, neglected, abandoned or is a delinquent or status offender, the Court may temporarily order such disposition as is appropriate, pending a fact finding hearing. Otherwise the case shall be dismissed.
- (6) If, after the initial hearing, the Court determines that there is probable cause to believe that a child has been sexually abused, severely physically abused, or severely neglected, and the Court determines that a criminal investigation has commenced or will commence in the near future, the Court shall place the child as provided in this Title. Such placement shall remain in force until the fact finding hearing, at which time placement shall be determined according to this Title. The Court shall have the discretion to implement placement according to the best interests of the child.

Section 4-3-4. Guardians.

- (1) The Court in its discretion may appoint a guardian of the person or property of the child at any appropriate point in proceedings under this Title. Any such appointment shall be made in accordance with the procedures set forth in this Title.
- (2) Guardians ad litem:
 - (a) **Appointment:** The Court in its discretion may appoint a guardian ad litem to represent a child in any proceeding under this Title or any criminal proceedings where the child may be a witness. The guardian ad litem shall be at least twenty one (21) years old, shall be of good moral character and integrity, and shall not be a close relative of the child or have any other special interest in the case that would prevent the guardian ad litem from representing the best interests of the child in an objective way. The Court may appoint the guardian ad litem at the initial hearing, or at any other appropriate point during the proceedings, including before a petition is filed.
 - (b) **Duties:** The guardian ad litem shall meet and become acquainted with the child as soon as feasible after appointment. The guardian shall, except where the best interests of the child indicate otherwise,

attend all court proceedings in the case, be present at interviews between the child and law enforcement officials, social workers, and other personnel who need to speak with the child in connection with the case, visit the child in any foster home or other court ordered placement for the purpose of determining whether the placement is in the best interests of the child, and determine the views of the child with the placement and communicate those views to the Court. The guardian ad litem shall perform such other duties as the Court shall order in the best interests of the child.

- (c) **Terms and Compensation:** The guardian ad litem shall continue to serve until discharged by the Court and shall be compensated as determined by the Tribal Council.
- (d) **Notice of Court Proceedings:** The Court shall notify the guardian ad litem of any court proceeding at which his or her attendance is required in accordance with this Title.

Section 4-3-5. Transfer of Juvenile Proceedings.

- (1) **Standards for Transfer:** Upon motion of petitioner or on its motion, the Court may waive juvenile proceedings so that the child may be tried as an adult in the Tribal Court where:
 - (a) the child is sixteen year old or more; and
 - (b) the child has previously been found to be a delinquent; or
 - (c) has been accused of a Class ____ offense.
 - (d) In determining whether the child should be tried as an adult the Court shall consider the seriousness of the crime alleged to have been committed; the extent of the child's prior delinquency record; the possibility of rehabilitation of the child, and the effects of prior attempts to rehabilitate the child.
- (2) **Notice:** The Court shall provide notice of the transfer hearing at least five (5) days prior to the hearing. Notice shall be provided in accordance with this Title, except that the child and his or her parents or custodian shall also be informed that they have the right to have the proceedings continued if they need additional time to seek counsel.
- (3) **Procedures:** The child must be physically present at the transfer hearing. The hearing shall be closed to the

general public. The Court may require the testimony of a physician or child care expert based on an examination of the child. The child or his or her authorized representative, and the parents or custodian have the right to be represented by counsel at their own expense, to be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses. The child has the right not be a witness against, or otherwise incriminate him or herself. The Court may call such witnesses as it deems necessary.

Section 4-3-6. Fact Finding Hearing.

- (1) **When a Fact Find Hearing Shall Be Held:** The fact finding hearing shall be held as soon as practicable following submission of the social study to the Court and the parents or custodian and other representative of the child. In all cases the final hearing shall be held within 30 days of the filing of the petition, unless the child or the child's authorized representative requests a postponement.
- (2) **Notice:** The Court shall provide notice of the fact finding hearing at least five (5) days prior to the hearing. Notice shall be provided in accordance with this Title.
- (3) **Procedures:** The child may be physically present at the fact finding hearing in the Court's discretion, except that in delinquency cases, the child must be present. Hearings shall be closed to the general public. The Court may require the testimony of a physician or child care expert based on an examination of the child. The child or his or her authorized representative, and the parents or custodian have the right to be represented by counsel at their own expense, to be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses. The child has a right not to be a witness against, or otherwise incriminate, him or herself. The Court may call such witnesses as it deems necessary.
- (4) **Order:** If the Court shall find, after the fact finding hearing that:
 - (a) there is clear and convincing evidence that the child is abused, neglected, abandoned, or a status offender; or
 - (b) that there is evidence beyond a reasonable doubt that the child is delinquent, the Court shall determine the proper disposition of the child under this Title. Otherwise, the petition shall be dismissed.

Section 4-3-7. Dispositional Hearings.

- (1) **When a Dispositional Hearings Shall Be Held:** A dispositional hearing shall be conducted as soon as practical after the conclusion of the fact finding hearing. Adequate time between the hearings, not to exceed 30 working days, shall be allowed to permit the Court to consider the dispositional alternatives that are in the best interests of the child. Notice shall be provided in accordance with this Title. In the discretion of the Court, the fact finding and dispositional hearings may be combined.
- (2) **Rights of the Parties to the Dispositional Hearings:** All rights provided at the fact finding hearing shall be provided at the dispositional hearing. If over ten (10) years of age, the child shall be physically present at the dispositional hearing unless the Court determines that the child would likely suffer severe emotional harm as a result of such presence. Otherwise, the presence of the child shall be in the discretion of the Court. The Court in its discretion may confer with the child with only the guardian ad litem present in order to determine the child's desires concerning disposition.
- (3) **Evidence:** At the dispositional hearing, the Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The Court shall consider all relevant reports submitted at the hearing in making a disposition, including any reports prepared by the child and his or her representative.
- (4) **Disposition:** The Court shall make such disposition as is in the best interests of the child. If the Court has found a child to have been abused, neglected or abandoned, the Court shall order one of the following dispositions, listed in order of preference:
 - (a) to the custody of the parent or custodian subject to such counseling, treatment, or other services as are deemed necessary to keep the child in the home;
 - (b) to the custody of a person related by blood or marriage to the child on or off the Reservation;
 - (c) to the custody of an approved Indian foster care home on the Reservation;
 - (d) to the custody of an approved institution on the Reservation, provided that such institution cannot be used for delinquents as well; or

- (e) to the custody of a non-Indian foster care home or institution on or off the Reservation, provided that such home or institution shall not be used for delinquent children as well.
- (5) **Delinquents or Status Offenders:** If a child is found to be delinquent or a status offender, the Court shall order one of the following dispositions, listed in suggested order of preference:
 - (a) probation with such conditions as the Court deems necessary;
 - (b) to the custody of an approved facility for delinquents or status offenders on the Reservation; or
 - (c) to an approved facility for delinquents or status offenders off the Reservation.
- (6) **Term of Commitment to Facility:** No order for commitment of any delinquent or status offender in an approved facility shall be for a term longer than six months or extend beyond the child's eighteenth (18th) birthday. If, after at least five months of a six month term have elapsed, the child care professional in charge of the delinquent or status offender believes that the child need further treatment and rehabilitation, he or she shall inform the Court and a hearing shall be held. If the Court finds that further treatment or rehabilitation is in the child's best interests, the Court shall order a further commitment of up to six months.
- (7) **Off Reservation Placement:** Off reservation placement shall be used only as a last resort, where no reasonable on Reservation placement is available. Whenever a child is placed temporarily off the Reservation, the Court shall require the party receiving the child to sign an agreement that the child will be returned to the Reservation upon written order of the Court.
- (8) **Right to Appeal:** The dispositional order constitutes a final order for purposes of appeal. The Court shall not stay a dispositional order pending appeal.

Section 4-3-8. Confidentiality.

- (1) All hearings held pursuant to this Title shall be:
 - (a) conducted in closed and private chambers;
 - (b) the names of all children involved shall not be published; and

- (c) a record of all proceedings shall be made and preserved with the Court.
- (2) All Court records concerning children under this Title, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order to the following persons and agencies:
 - (a) the child;
 - (b) the child's guardian ad litem or other representative;
 - (c) the child's parents or guardian and their representatives;
 - (d) the youth court counselor;
 - (c) any other person or agency having a legitimate interest in the case and in the performance of their duties, as determined by the Court.

Section 4-3-9. Expungement of Records.

Records of children involved in proceedings under this Title shall be physically sealed when the child reaches the age of 18 years old. Upon reaching the age of eighteen years, any child involved in proceedings under this Title may petition the Court to have such Court records destroyed. In any case, the Court may order such records, except those dealing with termination of parental rights, to be destroyed 10 years after the child reaches the age of 18 years old.

Section 4-3-10. Periodic Review.

Every 90 days the Court shall hold a hearing, following the procedures under this Title, to determine if the delinquent or status offender should remain in the approved facility to which he or she has been committed. Notice of the hearing shall be provided in accordance with this Title. If the Court finds that the child is not likely to commit additional delinquent or status offenses if released, the Court may release the child, subject to such terms or probation as the Court deems necessary.

Section 4-3-11. Petition To Return Child Removed From Parent.

- (1) The child, the child's parent or custodian, and any other authorized representative of the child may petition the Court for return of an abused, neglected, or abandoned child to the parent or custodian. Such a petition shall not be filed until three month's after the order of disposition and only at six month intervals thereafter. The petition shall be in writing, but need not be in any

particular form. Grounds for return include a showing that the child would not be in danger of being abused, neglected or abandoned upon return to the parent or custodian.

- (2) Upon receipt of a petition for return of a child, the Court shall order the youth court counselor to undertake a social study. If after consideration of the petition and social study, the Court finds substantial evidence that the child may safely be returned to the home of the parent or custodian, the Court shall order and hold a hearing on the matter, following the procedures set forth in this Title.

Section 4-3-12. Periodic Review of Children Removed from Parent.

Whether or not a petition for return is filed, the Court shall hold a hearing every 6 months to determine if the basis for the original removal still exists. Notice of the hearing shall be provided in accordance with this Title. If the Court finds that there is no longer clear and convincing evidence that grounds for removal exist, the Court shall order the return of the child to the parent or custodian. After two such hearings have been held, the Court may extend the review period to not exceed one year.

CHAPTER 4. TERMINATION OF PARENTAL RIGHTS

Section 4-4-1. Purpose of Termination of Parental Rights.

The purpose of this Chapter is to provide for termination of parental rights by Court order, to enable the child to be adopted by other adults. This part shall only be used for the purpose of facilitating an adoption which is being sought by a specific prospective adoptive parent pursuant to this Title.

Section 4-4-2. Who May File a Petition.

- (1) A parent, with the exception of a minor parent, may voluntarily file a petition for termination of parental rights.
- (2) One parent may file a petition for termination of parental rights between the other parent and the child.
- (3) A custodian of the child may file a petition for the termination of parental rights with respect to either or both parents.
- (4) A youth court counselor or _____ may file a petition for termination of parental rights with respect to either or both parents. (TRIBAL AGENCY)

Section 4-4-3. Contents of the Petition.

The petition for termination of parental rights shall include:

- (1) The name and place of residence of the petitioner.
- (2) The name, sex, date and place of birth and residence of the child.
- (3) The relationship of the petitioner to the child, if any.
- (4) The names, addresses, dates, and place of birth of the parents, if known.
- (5) Where the child's parent is a minor, the name and address of the child's grandparents, if known.
- (6) The name and address of the person having legal custody or guardianship of the child, or acting in the place of the parent of the child.
- (7) The grounds on which termination of parental rights is sought.

Section 4-4-4. Home Study Prior to Hearing.

- (1) Within ten (10) days of receiving a petition under this Chapter, the Court shall direct a youth court counselor or other designated tribal agency or employee to prepare a home study.
- (2) The home study shall include consultation with the child's parents, custodian, any other representative of the child, and all health, education, social services and other personnel who have had contacts with the child or parents, guardian or custodian. The study may also include a review of the child's Court records, medical records, if any.
- (3) The home study shall be submitted to the Court and the child's parents, guardian or custodian at least ten (10) days prior to the termination hearing.

Section 4-4-5. Notice.

- (1) After a petition has been filed and the home study has been submitted to the Court, the Court shall set the time and place for a hearing. The Court shall give notice by summons to the petitioner, the child, the parents, custodian, and such other persons as the Court determines are necessary for the proper adjudication of the matter. Notice shall be provided in accordance with this Title, except that the child and his or her parents shall also be informed that they have the right to have the proceedings continued if they need additional time to seek counsel.

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- (2) Proof of service of the summons and petition, or of notice by publication must be filed with the Court. A certificate shall be filed by the Clerk specifying that a copy of the summons and petition was mailed to the person's last known address not less than ten (10) days after the date of the first publication.
 - (3) In the case of a voluntary petition by a parent to terminate his or her parental rights, the parent may waive, in writing, notice and appearance in Court, provided the Court is assured that the parent understands the meaning and the consequences of the termination action. Where the parent is a minor, waiver shall not be effective.

Section 4-4-6. Hearing.

The child may be physically present at the hearing, in the Court's discretion. The hearing shall be closed to the public. The Court may require the testimony of a physician or child care expert based on examination of the child. The child, the child's authorized representative, and the parent may summon or produce such witnesses or evidence as they may desire. The Court may call such witnesses as it deems necessary.

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Section 4-4-7. Order.

The Court shall order parental rights terminated if the Court finds after the hearing that there is clear and convincing evidence:

- (1) That the child has continuously or repeatedly been abused, neglected or abandoned for a period of one year or more; and
- (2) The services available cannot adequately reduce the likelihood of further abuse, neglect, or abandonment, or there is no other way to protect the child from the risk or serious physical or emotional injury; or
- (3) The parent whose rights are to be terminated consents to the termination and has not withdrawn that consent for over one year.

Section 4-4-8. Disposition.

The child shall be placed with a prospective adoptive parent. Alternatively, until an interim decree is entered in the adoption proceeding, the Court, in its discretion, may make any other interim placement of the child as is consistent with the child's best interests.

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Section 4-4-9. Effects of Termination Order.

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All rights, duties, and obligations between the parents and the child, including the rights of inheritance, are terminated by the termination order. A termination order shall have no effect upon the child's tribal membership or quantum of Indian blood.

Section 4-4-10. Right of Appeal.

The termination order constitutes a final order for purposes of appeal. Adoption proceedings, however, shall not proceed until the parents have exhausted their right to appeal from the order terminating parental rights. **How long to appeal?**

CHAPTER 5. INDIAN CHILD WELFARE ACT PROCEDURES

Section 4-5-1. Intent.

The intent of this Chapter is to provide speedy and effective procedures for responding to notices and case referrals of child custody proceedings from state and tribal courts and agencies. It is the policy of the Te-Moak Tribe of Western Shoshone to accept transfer of cases and to intervene in cases where such transfer or intervention is in the best interests of the child.

Section 4-5-2. Definitions.

For purposes of this chapter, the terms "child custody proceeding", "Indian child" and "Indian custodian" shall have the definitions set forth in 25 U.S.C. 1903 (1), (4) and (6).

Section 4-5-3. Receipt of Referrals.

The _____ shall be the tribal official designated to receive notice from state and tribal courts and agencies of pending child custody proceedings involving an Indian child. The Tribe shall make its best efforts to notify state courts and agencies in the local area that the _____ has been so designated. If another tribal official receives a notice from a state or tribe concerning a pending child custody matter, that official shall immediately give the notice to the designated tribal official. The _____ shall keep a log by date and case name of all notices received. The _____ shall then give a copy of the notice to the Clerk of the Court.

Section 4-5-4. Duties of the Clerk of the Court.

The Clerk of the Court, upon receiving notice as required, shall make a record containing all essential information concerning the case, including:

- (1) The source of the notice.
- (2) The names and addresses of the child, parents and Indian custodians, if different from the parents.

- (3) The date of the referral.
- (4) Any deadline for responding to the notice.
- (5) The type of proceeding in the referring court or agency.
- (6) Whether the state or tribe is requesting that the Te-Moak Tribe accept jurisdiction over the matter.

Section 4-5-5. Investigation of Referral by Chief Judge.

Following proper docketing of the referral, the Chief Judge or his or her designees shall initiate an investigation of the case. The purpose of the investigation is to determine whether the Tribe has jurisdiction, and if it does, whether the Tribe should seek transfer of the case or intervene in the case in the foreign court or agency.

Section 4-5-6. Determination of Tribal Membership Status.

- (1) The first objectives of the investigation shall be to determine whether the child involved is a member of the Te-Moak Tribe or eligible for membership, whether the child has domicile or residence on the Reservation, and whether the child is a ward of the Tribal Court. The child shall be considered a ward of the Tribal Court if the child was removed from the custody of his or her parents or Indian custodian under provisions of this Title.
- (2) If the child a member of the Tribe or eligible for membership and has residence or domicile on the Reservation or is ward of the Tribal Court, the child custody proceeding is in the Tribe's exclusive jurisdiction and the Chief Judge shall immediately forward the case to the Tribal Council. The Council, if it agrees that the Tribe has exclusive jurisdiction, shall direct the Chief Judge to request transfer of the case. If the Council does not agree, it shall return the case to the Chief Judge for further investigation.
- (3) If the child is a member of the Tribe or eligible for membership, but neither has residence or domicile on the Reservation nor is a ward of the Tribal Court, the Tribe has concurrent jurisdiction over the case and can either request transfer of the case, intervene in the proceeding in the foreign court or agency, or take no formal action.
- (4) If the child is not a member of the Tribe or eligible for membership, then the Indian Child Welfare Act does not guarantee the right to have the case transferred or the right to intervene. Nonetheless, the Tribe can seek transfer of the case or to intervene in a case where it deems that such action would be in the best interests of

the child as determined under the standards set forth in this Title.

Section 4-5-7. Best Interests of the Child.

The next objective of the investigation shall be to determine facts that will assist the Chief Judge and the Council in determining the course of action that is in the best interests of the child, taking into account that continuing contact with the child's extended Indian family and Indian heritage is a strong component of that interest. The Judge and the Council shall take into account the wishes of the child's family and the wishes of the child, where the child is of sufficient age, but these wishes need not be given controlling weight. Where possible, the investigation should include review of the case file and interviews with the parents or Indian custodian, the child, the state or tribal social worker or other individual familiar with the case, and the foster parents, if any.

Section 4-5-8. Recommendation of the Chief Judge.

After the investigation is complete, the Chief Judge shall recommend to the Tribal Council that the Tribe either request transfer of the case, seek to intervene in the case, or take no formal action. The Chief Judge shall make his or her best efforts to forward the recommendation to the Council within ten working days of the Tribe's receipt of the referral. The Chief Judge shall be responsible for requesting that the proceedings in the foreign court or agency be stayed so that the Tribe can complete its investigation.

Section 4-5-9. Final Decision by Tribal Council.

After receipt of the recommendation of the Chief Judge, the Tribal Council shall make a final decision on the action to be taken. Where the Council has decided to request transfer of jurisdiction or to intervene, the Chief Judge shall immediately file or cause to be filed an appropriate petition in the foreign court or agency.

Section 4-5-10. Notification of Parents and Indian Custodian.

The Tribal Council shall notify the Indian child's parents or custodian of any decision to request transfer of jurisdiction or intervention. Notice shall be by certified mail, return receipt requested.

CHAPTER 6. ADOPTION

Section 4-6-1. Purpose of Adoption.

The purpose of this Chapter is to protect the rights and promote the welfare of Indian children, natural parents and

adoptive parents.

Section 4-6-2. Definitions.

For purposes of this Chapter, the definition of the following are:

- (1) **Adult:** A person eighteen (18) years of age or older.
- (2) **Minor:** A person less than eighteen (18) years of age.
- (3) **Guardian:** A person appointed by the Court to assume care and custody of a minor.
- (4) **Parent:**
 - (a) a child's mother;
 - (b) a father as to whom a child is presumed legitimate;
 - (c) a person adjudicated to be a child's father;
 - (d) a natural father of an illegitimate child who shows reasonable interest, concern, and responsibility for the child during the first thirty (30) days of the child's life or prior to the mother's consent to have the child adopted.

Section 4-6-3. Who May File Adoption Petition.

- (1) Any adult may file a petition to adopt an Indian minor residing within the Reservation or a minor tribal member not residing on the Reservation.
- (2) The Court may also hear petitions transferred from state courts pursuant to 25 U.S.C. 1911(b) and Chapter 5 of this Title.
- (3) In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife except that if one of the spouses is the natural parent of the child to be adopted, the natural parent shall not be required to join in the petition.
- (4) Where all person petitioning to adopt a child are not Indians, the petition shall not be granted unless:
 - (a) no Indian is available who is willing to adopt the child;
 - (b) the petitioners agree in writing that the Te-Moak Tribal Court shall retain exclusive jurisdiction over custody of the child, wherever domiciled or

resident;

- (c) written consent by a natural parent to the adoption by a non-Indian.

Section 4-6-4. Petition for Adoption.

A petition for adoption shall be filed with the Court. It shall be verified under oath by the adoptive parent(s), and shall contain the following:

- (1) The full name, residence, sex and documentary proof of the date and place of birth of the child to be adopted.
- (2) The full name, residence, date and place of birth and documentary proof of their marital status.
- (3) Proof of all consents required under this Title, and any court order terminating parental rights of the child to be adopted.
- (4) A statement by the adopting parent(s) that it is their desire that the relationship of parent and child be established between them and the child.
- (5) A full description and statement of value of all property owned or possessed by the child.

Section 4-6-5. Required Consent.

Consents to adoption shall be acknowledged before an officer duly authorized to take acknowledgements and witnessed by a representative of the Court. Consents to adoption shall be required from:

- (1) The child's parents, provided that no consent shall be required as to any parent whose parental rights have been terminated by court order, and provided further that not consent shall be required as to any parent whose whereabouts are unknown after a reasonable search and who, the Court finds has deserted the family for a period of at least two (2) years. A minor may consent to an adoption provided the parents of the minor concur. The Court may waive consent by the minor's parents if it finds that their withholding of such consent is unreasonable.
- (2) Any legal guardian of the child appointed under this Title, provided that the Court may waive this requirement, if it deems it necessary for the best interests of the child.
- (3) The child, if twelve years of age or older, provided that the Court may waive this requirement, if it deems it

necessary for the best interests of the child.

Section 4-6-6. Withdrawal of Consent.

No consent to adoption shall be withdrawn unless authorized by order of the Court, after notice and opportunity to be heard is given to the petitioner in the adoption proceedings, and to the person seeking to withdraw consent. The Court shall not grant permission to withdraw consent unless it finds that the best interests of the child will be served by such withdrawal. The entry of an order of adoption renders any consent irrevocable.

Section 4-6-7. Investigation Report.

Within five (5) days after the filing of a petition for adoption, the Court shall request a social worker, juvenile officer, probation officer, or similar employee of the Tribe or Bureau of Indian Affairs to inquire into, investigate, and report in writing to the Court as to the suitability of the child for adoption, the financial ability, fitness and general background of the adoptive home and of the adoptive parent(s), and to make recommendations on the proposed adoption.

Section 4-6-8. Hearing on Adoption.

- (1) Within five (5) days after the written report is filed, the Court shall fix a time for a hearing on the petition for adoption. Notice of the hearing shall be provided to the adoptive parents, any person whose consent is required, and in the discretion of the Court, to interested persons whose consent is not required. Notice given shall conform to the requirements of this Title. The adoptive parents shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall appear personally, unless represented by a person having a power of attorney authorizing such person to represent them for the purpose of the adoption or unless such person cannot be found.
- (2) The Judge shall separately examine all persons appearing and if satisfied as to the suitability of the child for adoption, the validity of the consent to adoption, the financial ability, fitness, and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, may enter a final decree of adoption.
- (3) In the case of a child who had been in the care and custody of the petitioners for more than one year, the decree shall be final. Where the child has not been in the care and custody of the petitioners prior to the hearing, the Court shall enter an interim decree, and place the child in the legal custody of the petitioners for a period of not less than one year prior to entering

a final decree of adoption. Where the child has been in the care and custody of the petitioners for less than one year, the Court shall enter an interim decree, and place the child in the legal custody of the petitioner for a period of time such that when the interim decree expires, the petitioners will have had care and custody of the child for at least one year.

Section 4-6-9. Report and Final Decree of Adoption.

Where an interim decree is entered, the Court, after the child has been in the custody of the petitioners for one year, shall request a supplementary written report as to the welfare of the child, and current conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court until the child to be adopted has lived and resided for a period of at least one year in the home of the adoptive parents. In any case where the Court finds that the best interests of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request the Bureau of Indian Affairs to provide services to assist in the placement and the care of the child.

Section 4-6-10. Adoption Records.

- (1) All records, reports, proceedings and orders in adoption cases are confidential records of the Court and shall not be available for release to or inspection by the public. Such records, reports, proceedings and orders shall be made available to appropriate Tribal agencies and the Bureau of Indian Affairs for use in fulfilling authorized functions.
- (2) Upon petition of an adopted person who has reached the age of majority, for good cause shown, the Court shall release to the adopted person the information contained in such adoption records, reports, proceedings and orders.

Section 4-6-11. Contents of Adoption Order.

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, that the adoptive home is adequate, and that the adoptive parents are capable of providing proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearing. A true and correct copy of each adoption order shall be filed with the Tribal Secretary, with the Clerk of the Court and with the Division of Vital Statistics.

Section 4-6-12. Name and Legal Status of Adopted Minor.

Minors adopted by order of the Court shall assume the surname of the person by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights as natural children or heirs of the persons adopting them.

CHAPTER 7. GUARDIANSHIP

Section 4-7-1. Definition of Guardian.

A guardian is an adult appointed to take care of the person or property of another. The guardian must exercise the highest standard of care for the ward, and is subject to regulation by the Court. A guardian who is not a member of the ward's family cannot be an heir of the ward.

Section 4-7-2. Persons for Whom Guardians May be Appointed.

- (1) **Minors:** A guardian may be appointed for any Indian subject to the jurisdiction of the Court who is under 18 years of age and who has no living parent or who has been declared a ward of the Court under this Title. In the discretion of the Court, a guardian may be appointed in other appropriate situations; for example, where a guardian is required in order for the child to attend school in a particular district.
- (2) **Incapacitated Persons:** A guardian may be appointed for an Indian subject to the jurisdiction of the Court who by reason of mental illness, mental deficiency, organic brain disease, physical illness or disability, or chronic drug or alcohol abuse, lacks the capacity to make responsible decisions concerning his or her person or property, and who has no competent parent or spouse who can perform the duties required of a guardian.

Section 4-7-3. How Guardians Are Appointed.

- (1) **By Will:** The last surviving parent or spouse of a minor or incapacitated person may designate in a will the guardian for the minor or incapacitated person. Upon determination by the Court that the will is valid, that the individual for whom a guardian has been designated is in fact a minor or incapacitated person, and that the person designated is willing to accept the responsibilities of guardianship, the Court shall appoint the person designated, provided that for good cause shown, the Court may decline to appoint the person designated.
- (2) **By Court Appointment:** Where a minor or mental incompetent is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Court may appoint a guardian to promote the best interests of the minor or

CHAPTER 10. GENERAL PROVISIONS

Section 1-10-1. Statute of Limitations.

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

- (1) Any action against the Te-Moak Tribe or its officers or employees arising from the performance of their official duties must be commenced within one (1) year of the date the cause of action occurred.
- (2) Actions derivative of leases of the Te-Moak Tribal trust land or other tribal or Indian-owned land on or off the Te-Moak Indian Reservation must be commenced within six (6) years of the date the cause of action accrued.
- (3) Actions alleging intentional torts shall be commenced within one (1) year of the date the cause of action accrued.
- (4) Any other action must be commenced within two (2) years of the date the cause of action accrued, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting the fraud or mistake.
- (5) Criminal offenses committed after enactment of this Code shall be filed within the following time periods or they shall be forever barred:
 - (a) Class A offenses: 5 years;
 - (b) Class B offenses: 2 years;
 - (c) Class C offenses: 1 year.
- (6) The period of limitations for a criminal offense shall commence upon commission of the crime, but shall not run during any period in which the defendant is not physically located on the Te-Moak Tribal Reservation.

Section 1-10-2. Principles of Construction.

The following principles of construction will apply to this Code unless a different construction is obviously intended.

- (1) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.

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

Section 1-10-3. Definitions.

The following definitions will apply for the purposes of this Code:

- (1) Indian or Indian Person: shall include any person of Indian descent who is an Indian for purposes of federal criminal jurisdiction under Title 18, U.S.C. Section 1151, et seq.
- (2) Member: . shall include a person who is enrolled in or lawfully entitled to enrollment in the Te-Moak Tribe pursuant to the Article 1 of the Constitution.
- (3) Reservation: shall include all lands within the jurisdiction or control of the Te-Moak Tribe.
- (4) Tribe: shall mean the Te-Moak Tribe unless another specific Indian Tribe is clearly intended.
- (5) Tribal Council: shall mean the Te-Moak Tribal Council.
- (6) Superintendent: shall mean the Superintendent of the Bureau of Indian Affairs, or any successor officer thereof.

- (7) Age of Majority: shall mean 18 years of age unless otherwise provided in this Code or Tribal Constitution.

CHAPTER 11. JUDICIAL CODE OF CONDUCT AND ETHICS

CANONS

1. A judge should uphold the integrity and independence of the judiciary.

2. A judge should avoid impropriety and the appearance of impropriety in all activities.

3. A judge should perform the duties of office impartially and diligently.

4. A judge may engage in activities to improve the law, the legal system and the administration of justice.

5. A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

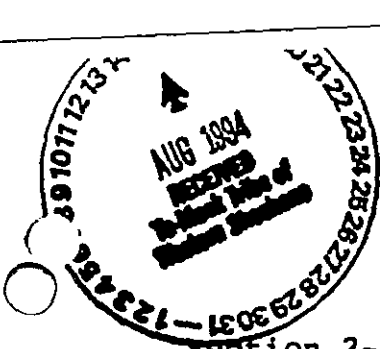
6. A judge should regularly file reports of compensation received for quasi-judicial and extrajudicial activities.

7. A judge should refrain from political activity inappropriate to judicial office.

Section 1-11-1. CANON 1. A Judge Should Uphold The Integrity And Independence Of The Judiciary.

Independent and honorable judges are indispensable to justice on the Te-Moak Tribal Reservation. A judge should participate in establishing, maintaining, and enforcing justice. A judge should observe high standards of conduct so that the integrity and independence of all judges may be preserved. The provisions of this Code should be construed and applied to further that objective.

Section 1-11-2. CANON 2. A Judge Should Avoid Impropriety And The Appearance Of Impropriety In All Activities.



TITLE II. CIVIL PROCEDURE

CHAPTER 1. PRE-TRIAL PROCEDURES



Section 2-1-1. Complaint.

A complaint is a concise written statement of the essential facts constituting the claim. All civil proceedings shall be started by filing a complaint with the Clerk of the Court, accompanied by a filing fee of \$20.00, or whatever is established by the Court and approved by the Tribal Council.

Section 2-1-2. Service of Process.

- (1) Each defendant shall be served with a copy of the complaint.
- (2) Service shall be made in one of the following ways:
 - (a) to the defendant personally;
 - (b) to a person of suitable age and discretion at the defendant's residence or usual place of business who also resides or works there;
 - (c) to an agent authorized by appointment or by law to receive service of process;
 - (d) by registered or certified mail, return receipt requested, to the defendant's usual residence or principal place of business.
 - (e) if defendant's last known address is on the Te-Moak Tribal Reservation, by publication of the required papers in any local newspaper of general circulation on the Reservation designated by the Court, at least once per week for four (4) consecutive weeks.
 - (f) by publication of the required paper in any local newspaper of general circulation at the defendant's last known address outside the Te-Moak Tribal Reservation.
 - (g) service of process upon the Tribe, or an officer of the Tribe named as a party defendant, shall be made by delivering a copy of the complaint to the Tribal Chairman, the tribal attorney and the officer named in the manner prescribed in this section, except that service by publication is not permitted.
 - (h) service in person shall be made by any law enforcement officer or by any adult not a party to the case.

- (i) where the Court has jurisdiction of the cause of action, service may be made anywhere within the United States.
- (j) the return postal receipt, filed in the case record, shall constitute proof of service by mail. The affidavit of service by the person making service, filed in the case record, shall constitute proof of service.

Section 2-1-3. Hearing.

At the time the complaint is filed, the Clerk of the Court shall schedule a hearing on the claim not less than **thirty (30)** days after the complaint is filed. The Clerk of the Court shall furnish the plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. At the hearing, the Judge shall ascertain whether:

- (1) The Court has subject matter jurisdiction over the dispute.
- (2) The plaintiff has exhausted tribal administrative remedies.
- (3) The defendant has any defenses to the claim, or wished to present any counterclaim against the plaintiff or cross-claim against any other party or person concerning the same transaction or occurrence.
- (4) Any party wishes to present evidence to the Court concerning the facts of the transaction or occurrence.
- (5) The interest of justice requires any party to answer written interrogatories, produce any documents or other evidence, or otherwise engage in any pre-trial discovery considered proper by the Judge.
- (6) Some or all of the issues in dispute can be settled without formal adjudication.
- (7) The claim is ready for trial:
 - (a) If the claim is ready for trial, the Judge may try it immediately or set a subsequent trial date.
 - (b) If the claim is not ready for trial, the Judge shall set a subsequent date for trial and order such preparation by the parties as deemed necessary.

Section 2-1-4. Issuance of Subpoenas.

- (1) Upon request of any party or upon the Court's own

initiative, the Court shall issue subpoenas to compel testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by a Judge and which are to be served within the boundaries of the Reservation. Each subpoena shall be accompanied by a certified check or money order, prepaying the witness fees and other expenses required, and no subpoena shall be valid in the absence of such a check or money order. CAN THE COMMUNITY AFFORD THIS.

- (2) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the Court, and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

Section 2-1-5. Service of Subpoenas.

A subpoena may be served in the manner prescribed for Service of Process, except that service by publication is not permitted.

Section 2-1-6. Failure to Obey Subpoena.

In the absence of a good cause that is satisfactory to the Court, a person who fails to obey a subpoena issued and served in accordance with the provisions of this Code may be cited and held in contempt of court.

Section 2-1-7. Witness Fee and Expenses. I DON'T THINK THE COMMUNITY CAN AFFORD THIS SECTION. IT WOULD ALMOST BE IMPOSSIBLE FOR A CIVIL TRIAL TO BE HEARD IF THIS SECTION WERE ENACTED.

CHAPTER 2. TRIALS

Section 2-2-1. Trial Procedure.

- (1) The time and place of Court sessions, the rules of evidence to be followed by the Court and all other details of judicial procedure may be set out in rules of court.
- (2) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court.
- (3) Civil cases shall be tried before a judge and not a jury, except that either party has the right to a jury trial if

the amount in controversy in the claim or any counterclaim exceeds two thousand five hundred dollars (\$2,500), and the Court in its discretion may grant a jury trial where the amount in controversy is less than \$2,500. If a jury trial is granted, the Court shall follow the same provisions provided for criminal jury trials, except to the extent such procedures are uniquely applicable to criminal proceedings. In addition to challenges for cause, as determined by the Judge, each party or side shall be entitled to (1) preemptory challenge. A verdict shall be rendered by at least a **five sixth (5/6) majority** of the six person jury. If, after the proceedings begin and before a verdict is reached, a juror becomes unable to perform his/her duty, the parties may agree to complete the action with the other jurors. If the parties cannot agree, the Judge shall discharge the jury and the case shall be tried with a new jury. The compensation and expenses (if allowed) shall be assessed as court costs against the parties as provided in the judgment of the case.

- (4) The case of the plaintiff shall be presented first, followed by the case of the defendant. If rebuttal is required, the plaintiff shall proceed first, followed by the defendants.
- (5) At the conclusion of the evidence, the plaintiff and defendant each in turn may summarize the proof and make final arguments.

Section 2-2-2. Consolidated and Separate Trials.

- (1) **Consolidation:** The Court may, upon motion of any party or on its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating to the actions or is such will tend to avoid unnecessary cost or delay.
- (2) **Separate Trials:** The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

Section 2-2-3. Intervention.

A person may be permitted in the discretion of the Court to intervene as a party to an action in cases where property in which he/she claims an interest may be substantially affected by disposition of the action or where the applicant for intervention asserts a claim or defense which presents a question of law or fact common to the main action.

Section 2-2-4. Substitution of Parties.

If a party dies, becomes incompetent or transfers their

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interest, a substitute or successor may be joined or substituted as justice requires.

Section 2-2-5. Findings By the Court.

In cases tried without a jury and, except where a party defaults, fails to appear, or otherwise waives his/her rights to findings and conclusions, the Court shall make findings of fact and conclusions of law in support of all judgments.

CHAPTER 3. JUDGMENTS

Section 2-3-1. Judgments.

A judgment shall be entered in each civil case. The judgment shall be for money or other relief or for dismissal. A judgment is complete and shall be deemed entered when it is signed by the Judge and filed with the Clerk of the Court.

Section 2-3-2. Judgment by Default.

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Where any party, after being served with a copy of the complaint as provided in this chapter in the case of a defendant, fails to appear at the hearing, at trial, or otherwise to prosecute or defend a case, the Court may enter a default judgment granting the relief sought in the complaint, upon such showing of proof by the plaintiff as the Court deems appropriate, or may dismiss the case for failure to prosecute. The Court may, for good cause shown, set aside a entry of a default judgment or dismissal for failure to prosecute.

Section 2-3-3. Proof of Satisfaction.

A judgment may be satisfied in whole or in part as to any or all of the judgment debtors by the owner thereof or his/her attorney of record executing under oath and filing an acknowledgement of satisfaction specifying the amount paid and whether it is full or partial satisfaction. The Clerk of the Court shall file all satisfactions of judgment and note the amount thereof in the judgment docket.

Section 2-3-4. Execution.

- (1) If any final judgment for money rendered by the Court is not satisfied within sixty (60) days of entry, or such other time fixed by the Court, the judgment creditor may apply to the Court for an order directing the judgment debtor to appear before the Court for purposes of itemizing his/her property.
- (2) After giving the judgment debtor an opportunity for hearing, the Court shall determine what property is available for execution, and shall order tribal law

enforcement officers to seize such property as may be necessary to satisfy the judgment. In addition, the judgment may be paid out of any funds on deposit to the credit of the judgment debtor at the agency, not exempt under this section, when such payment is authorized by the Secretary of Interior, or an authorized representative, on such terms and conditions as the Secretary may prescribe.

Section 2-3-5. Judgment Constitutes a Lien.

A judgment shall constitute a lien on any non-exempt property of the judgment debtor. Notice of this lien may be filed by the judgment creditor in the public records of any county or state where such property is located.

Section 2-3-6. Life of Judgment.

No judgment of the Court for money shall be enforceable after five (5) years from the date of entry, unless application to renew the judgment shall have been filed before the date of expiration pursuant to this chapter.

Section 2-3-7. Renewal of Judgment.

Upon application of the judgment creditor prior to the expiration of five (5) years after the date of the entry of a judgment for money, the Court shall order the judgment renewed and extended for an additional five (5) years.

Section 15-3-8. Stay of Judgment.

Except as provided herein, no execution or enforcement shall issue in any judgment in a civil case until the expiration of thirty (30) days after its entry. When a petition for review has been filed with the Court of Appeals following the judgment, the trial court may stay its judgment, or may stay or grant an injunction during the pendency of the petition and any ensuing appeal on such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party, as more particularly provided in this Code. No bond, obligation or other security, however, shall be required from the Tribe, an agency of the Tribe, or an officer of the Tribe acting in his/her official capacity.

Section 2-3-9. Costs and Attorney Fees.

- (1) In civil actions, costs shall be awarded the prevailing party as part of the final judgment unless the Court otherwise orders. No costs shall be awarded against the Tribe, or against any officer of the Tribe or member of the Tribal Council sued in his/her official capacity.
- (2) Costs shall include filing fees, reasonable and necessary

expenses of involuntary witnesses, cost associated with compensation and expenses of the jury, and other proper and reasonable expenses. Attorney fees shall not be awarded to the prevailing party in a civil suit unless the Court determines that the case has been prosecuted or defended solely for harassment and/ or frivolous in nature.

Section 2-3-10. Property Exempt from Judgment for Money.

There shall be exempt from the satisfaction or payment of all judgments for money, except judgments for the support of a spouse or children, the following property of the judgment debtor or the debtor's spouse:

- (1) Provisions for food and fuel necessary to supply the debtor and immediate family for _____, or their monetary equivalent.
- (2) All clothes and personal effects.
- (3) All household furnishings. Only 1 T.V. and Stereo.
- (4) One (1) dwelling place.
- (5) One (1) vehicle with a value not to exceed \$_____
- (6) Farm equipment, livestock, and seed with a value not to exceed \$_____.
- (7) Tools of trade.
- (8) All money, benefits, privileges or immunities in any manner growing out of any life insurance of the life of the debtor.
- (9) All retirement benefits.
- (10) Real property held in trust by the United States.
- (11) These exceptions may be subject to satisfaction and payment of judgments where the judgment debtor has executed a valid and lawful mortgage or security agreement with the judgment creditor, specifically pledging such property as collateral.

Section 2-3-11. Garnishment of Wages.

- (1) The Court may, in a civil action for garnishment filed by a judgment creditor, order garnishment of the unpaid past or future wages of the judgment debtor for satisfaction of the Tribal Court judgment. No garnishment action shall be filed unless the judgment has been unsatisfied for sixty (60) days or more. In any such action the

judgment debtor and the judgment debtor's employer shall be named as defendant's. This section does not apply when the Te-Moak Tribe or any agency thereof, is named as the garnishee. There should be a separate garnishment section when the Tribe is named as garnishee.

- (2) The maximum amount of wages in any one work week subject to garnishment is the lesser of:
 - (a) twenty five percent (25%) of the judgment debtor's disposable (**net**) wages for that work week; or
 - (b) the amount by which the judgment debtor's disposable wages for that week exceed forty (40) times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938.
- (3) The garnishment order shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from their employment; provided that if the judgment debtor is re-employed or rehired within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.
- (4) No employer shall discharge an employee for the reason that a judgment creditor or the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment.
- (5) For the purposes of this Section:
 - (a) **Wages:** means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise.
 - (b) **Disposable Wages:** means that part of the wages of an individual left after the deduction from those earnings of federal tax withholdings, social security withholdings, and any other amounts required by applicable law to be withheld by the employer.
- (6) Notwithstanding any other provision of law, monies (the entitlement to which is based upon remuneration for employment) due from, or payable by, the Tribe (including any agency, subdivision, or instrumentality thereof) to any individual, shall be subject, in like manner and to the same extent as if the Tribe was a private person, to legal process brought for the enforcement against such individual of his/her legal obligations to provide child support or make alimony payments, or make rental payments to the Te-Moak Tribal Housing Authority. Service of legal process brought for the enforcement of an individual's obligation to provide such payments shall be

accomplished by certified or registered mail, return receipt requested, or by personal service upon the Tribal employee. No Tribal employee shall be subject to any disciplinary action or civil or criminal liability or penalty whatsoever for, or on account of, any order of the Tribal Court pursuant to this Section.

THIS SECTION NOT NECESSARY IF TRIBE WANTS A SEPARATE CODE SECTION FOR GARNISHMENT WHEN TRIBE IS NAMED AS GARNISHEE.

Section 2-3-12. Enforcement of Judgment of Other Jurisdictions.

- (1) The Tribal Court may, as a matter of comity, enforce the judgment of another Tribe, the United States or a State, provided, that such a judgment may be enforced only after hearing or trial, on an action or special proceeding in the Tribal Court, requesting enforcement relief and complying with the procedure of this Code. An authenticated copy of the judgment of the other jurisdiction shall accompany the complaint seeking enforcement.
- (2) The Tribal Court shall not enforce the judgment of another jurisdiction where evidence establishes:
 - (a) a lack of jurisdiction;
 - (b) a lack of due process, including lack of notice to the defendant;
 - (c) that the judgment was by default;
 - (d) that the judgment conflicts with a final judgment of the Tribal Court, or a court of another jurisdiction;
 - (e) that the judgment is contrary to the public policy of the Tribe; or
 - (f) collusion, fraud or clear mistake of law or fact.

CHAPTER 4. EXTRAORDINARY WRITS

Section 2-4-1. Temporary Restraining Orders Without Notice.

- (1) No temporary restraining order or other injunction without notice shall be granted where the Tribe is a defendant or a tribal official is a defendant in his/her official capacity. Otherwise, except as provided in this Section, no temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by oral testimony, affidavit or by the complaint that immediate and irreparable injury will result to the applicant before

notice can be served and a hearing had thereon.

- (2) In cases where a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the temporary restraining order or injunction shall proceed with the application for a preliminary injunction and, if he/she does not do so, the Court shall dissolve the temporary order. On two (2) business day's notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as possible.
- (3) Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance and shall expire by its terms within such time after entry not to exceed ten (10) days, as provided in the order.

Section 2-4-2. Preliminary Injunctions.

- (1) A preliminary injunction restrains activities of a defendant until the case can be determined on the merits.
- (2) No preliminary injunction shall be issued without notice to the adverse party and an opportunity to be heard.
- (3) No preliminary injunction shall be issued absent clear and convincing proof by specific evidence that:
 - (a) the applicant will suffer irreparable harm during the pendency of the litigation unless a preliminary injunction is issued,
 - (b) that the applicant has a high likelihood of success on the merits, and
 - (c) that the balance of equities favors the applicant over the party sought to be enjoined.
- (4) The Court may dissolve or modify a preliminary injunction at any time as the interests of justice require.

Section 2-4-3. Security.

Except as otherwise provided by law, no temporary restraining order or preliminary injunction shall issue except upon giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or

suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Tribe, an officer of the Tribe or agency thereof.

Section 2-4-4. Habeas Corpus.

- (1) Relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise unlawfully deprived of liberty.
- (2) Upon the filing of the complaint, the Court shall issue a writ directed to the defendant commanding him/her to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed to hear the matter and render judgment accordingly.

CHAPTER 5. APPLICABLE LAWS

Section 2-5-1. Applicable Laws.

- (1) In determining any case over which it has jurisdiction, the Court shall give binding effect to:
 - (a) any applicable constitutional provision, treaty, law or any valid regulation of the United States;
 - (b) any applicable provision of the Tribal Constitution or any law of the Tribe not in conflict with Federal law;
 - (c) any applicable custom or usage of the Tribe not in conflict with any law of the Tribe or of the United States. Where doubt arises as to such customs and usages, the Court may request the testimony, as witnesses of the Court, of persons familiar with such customs and usages.
- (2) Where appropriate, the Court may in its discretion be guided by statutes, common law or rules of decisions of the State in which the transaction or occurrence giving rise to the cause of action took place.

CHAPTER 6. STATUTE OF LIMITATIONS

Section 2-6-1. Limitations on Actions.

The Court has no jurisdiction over any suit brought more than three (3) years after the cause of action arose, except that no statute of limitation shall bar an action brought by the Tribe.

CHAPTER 7. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Section 2-7-1. Exhaustion Requirements.

- (1) The Court shall have no jurisdiction to entertain any action against the Te-Moak Tribe, any agency or instrumentality thereof, or any Tribal official or employee complaining of the official conduct thereof unless the plaintiff in such action has first exhausted Tribal administrative remedies in an effort to correct the matter.
- (2) A plaintiff shall be deemed to have exhausted administrative remedies if:
 - (a) a good faith effort to invoke and comply with all reasonable administrative procedures to the dispute or complaint has been made;
 - (b) the final administrative action taken does not satisfy the plaintiff or the relevant Tribal agency or official has taken no action on the administrative complaint within sixty (60) days of the date it was filed.
- (3) Notwithstanding the above, the Court has jurisdiction to... entertain an application for a temporary restraining order (TRO) or preliminary injunction against the Te-Moak Tribe, the Tribal Council, a tribal governmental agency or instrumentality, or any Tribal official or employee after hearing, where the failure to issue such TRO or preliminary injunction for the minimum time necessary to exhaust remedies under this section would produce irreparable injury, loss or damage to petitioner and where the issuance of the TRO would not cause undue loss or inconvenience to the defendant.
- (4) Nothing in this Section shall be construed to constitute a waiver of the Te-Moak Tribe's sovereign immunity from suit in civil actions or the comparable immunities and defenses of any officer, agency or instrumentality thereof.

CHAPTER 3. TRIAL PROCEEDINGS

Section 2-3-1. Prosecution of Offenses.

- (1) No Indian person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt in open court, by a court of competent jurisdiction, provided, however, that no incarceration or other disposition of one accused of an offense before trial in accordance with these rules shall be deemed a punishment.
- (2) All criminal proceedings shall be prosecuted in the name of the Te-Moak Tribe of Nevada against the Indian person charged with an offense, referred to as the Defendant.

Section 2-3-2. Rights of Defendant in Criminal Cases.

In all criminal proceedings, the defendant shall have the following rights:

- (1) To appear and defend in person and by attorney or lay counselor at the defendant's own expense;
- (2) To be informed of the nature of the charges against him/her and to have a copy thereof;

- (3) To testify in his/her own behalf, or to refuse to testify regarding the charge(s) against him/her, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him/her, the defendant shall be deemed to have waived all right to refuse to testify in that criminal proceeding;
- (4) To confront and cross examine all witnesses against the defendant;
- (5) To compel by subpoena the attendance of witnesses in his/her own behalf;
- (6) To have a speedy public trial by an impartial judge or jury as provided in these rules;
- (7) To appeal all guilty convictions;
- (8) To not be twice put in jeopardy by the Te-Moak Tribe of Nevada for the same offense.

Section 2-3-3. Issuance of Subpoenas.

- (1) Upon request of the defendant or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by a Judge and which are to be served within the boundaries of the Reservation.
- (2) A subpoena shall bear the following:
 - (a) Signature of a Judge of the Court;
 - (b) Name of the Court;
 - (c) Name of the person or description of the physical evidence to be subpoenaed;
 - (d) The title of the proceeding;
 - (e) The time and place where the witness is to appear or the evidence is to be produced.

Section 2-3-4. Service of Subpoenas.

- (1) A subpoena may be served anywhere. However, any subpoena

to be served outside the boundaries of the Reservation shall be issued personally by a judge or the Court.

- (2) A subpoena may be served by any law enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his/her usual place of residence or business with any person of suitable age and discretion who also resides or works there.
- (3) Proof of service of the subpoena shall be filed with the Court by noting on the copy of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

Section 2-3-5. Failure to Obey Subpoena.

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in contempt of court.

Section 2-3-6. Trial Together of Charges.

- (1) Two or more defendants may be tried together if they could have been joined in a single complaint and a single defendant may be tried on more than one complaint at a single trial.
- (2) If it appears that a defendant or the Tribe is prejudiced by a joinder of offenses or other defendants for trial together, the Court may order separate complaints and may order separate trial or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Tribe to deliver to the Court for inspection in chambers, any statements made by a defendant which the Tribe intends to introduce in evidence at the trial.

Section 2-3-7. Trial Procedure.

- (1) The time and place of court sessions, the rules of evidence to be followed by the Court and all other details of judicial procedure may be set out in rules of court.
- (2) The defendant shall be present in court at every stage of the trial, including impaneling the jury, return of the verdict, and imposition of the sentence.

- (3) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court and available to the defendant.
- (4) The defendant is presumed to be innocent. The prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt, including the facts that a crime has actually been committed, and that the defendant committed it with the requisite intent, when intent is an element of the offense.
- (5) The prosecution shall present its case first, followed by the case of the defendant. If rebuttal is required, the prosecution shall proceed first, followed by the defendant.
- (6) At the conclusion of the evidence, the prosecution and defendant each in turn shall summarize the proof and make final argument, with the prosecution having the right of final rebuttal.
- (7) All records relating to statements or confessions of the defendant, or reports of physical, mental, or other scientific tests or examinations relating to or performed on the defendant, when in the possession or control of the Tribe, shall be open to inspection and copying by the defendant.
- (8) The prosecutor is obligated to disclose to the defendant or the defendant's attorney or lay counsel any evidence or information in the possession of the police or the prosecution which tends to cast doubt on the guilt of the defendant for the offense(s) charged.
- (9) At any time in the trial process, the Judge may appoint an interpreter and may fix the reasonable compensation of such interpreter. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the Judge.

Section 2-3-8. Jury Trials.

- (1) Any Indian person accused of a crime punishable by imprisonment may request and be granted a jury trial. A request for a jury trial should be made at the time of arraignment. A jury trial will not be granted, however, if the request is made later than ten (10) working days before the original trial date.

- (2) A jury shall consist of at least six (6) members of the Tribe selected at random from a list of eligible jurors prepared each year by the Court.
- (3) An eligible juror shall be:
 - (a) A tribal member who has reached the age of eighteen (18) years, but is less than seventy (70) years of age, who is of sound mind and discretion;
 - (b) Not convicted of a felony or Class A offense;
 - (c) Not a member of the Tribal Council, Judge, or officer or employee of the Court or an employee of the Tribal Police;
 - (d) A resident of the Te-Moak Tribal Reservation;
 - (e) Otherwise qualified according to standards established by the Court.
- (4) A list of at least twenty one (21) resident enrollees of the Tribe who are eligible for jury duty shall be prepared and maintained by the Clerk of Court.
- (5) Under the supervision of the presiding Judge, a panel of jurors shall be drawn by lot from the jury list. A trial jury shall consist of six (6) qualified jurors selected from the list. None of the jurors shall have an interest in the case or be closely related by blood (first cousin or closer) to any of the parties in the case. If the jury panel is exhausted before a sufficient number of jurors are selected for the trial jury, additional jurors shall be drawn by lot from the jury list for the panel until a trial jury is selected.
- (6) The Judges of the Court shall have the power to issue subpoenas to compel the attendance of members of the jury panel and of trial jurors. Subpoenas shall be signed by the Judge issuing them. The Judge assigned to the case shall have the power to excuse persons from jury duty on for good cause shown.
- (7) Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury. The Judge may disqualify jurors for cause as determined by the Judge. The prosecution and the defendant shall be entitled to one (1) preemptory challenge. Where there is more than one (1) defendant, they must join in a challenge before it can be made unless the Court, for good cause shown, shall permit otherwise.

- (8) Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation at a rate determined by the Tribal Council. Payment may be made from funds available in the Court Fines Account.
- (9) The judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law. At the close of evidence or at such earlier time during the trial as the Judge directs, any party may file with the Judge written instructions on the law which the party requests the Judge to deliver orally to the jury. At the same time copies of such requests shall be furnished to the opposing party. The Judge shall inform each party of his/her proposed action upon each request prior to the arguments to the jury, but the Judge shall deliver his/her instructions to the jury after arguments are completed. No party may assign as error any portion of the Judge's charge or any omission unless objections and reasons for are made before the jury retires to consider its verdict. Opportunity shall be given to make the objection out of the hearing of the jury.
- (10) After deliberation in private, the jury in criminal cases shall return to the Judge in open court a verdict of "Guilty" or "Not Guilty" with respect to each defendant and for each offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if such an attempt is an offense, without the necessity of the defendant having been formally charged with such lesser offenses or with attempt. The verdict of "Guilty" shall be by a unanimous vote of the jury.

Section 2-3-9. Evidence.

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the following rules:

- (1) **Form:** At all hearings and trials, the testimony of witnesses shall be taken orally upon oath or affirmation, unless otherwise provided in these rules.
- (2) **Examination and Cross Examination:**
 - (a) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from younger witnesses or poor ability to communicate.

- (b) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.
 - (c) Cross examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses shall be allowed on direct or cross examination to assure complete development of all relevant facts.
- (3) **Testimonial Evidence:** Testimonial evidence which tends to show the existence or non-existence of any material fact at issue in a criminal trial shall be admitted, provided that:
- (a) Testimony, the admission of which would deny either party any right guaranteed by Federal or Tribal law, including but not limited to the right to be confronted with the witnesses against a defendant, shall not be admitted; and
 - (b) Testimony which, because of its inflammatory nature or its inherent unreliability would tend to have a significant prejudicial impact on the trier of fact that would far outweigh its contribution to proof of the existence or non-existence of a material fact shall not be admitted; and
 - (c) Testimony, the admission of which would violate the exclusionary rules on privileged communications under Nevada law relating to privileges and immunities of witnesses, which law is hereby incorporated by reference, and including, but not limited to the priest/penitent privilege, shall not be admitted; and
 - (d) Hearsay evidence, to be admissible, must be deemed reliable by the Judge.
- (4) **Weight and Worth of Testimonial Evidence:** The Court shall evaluate, and in jury trials shall direct the jury to evaluate, the credibility of all witnesses' testimony in terms of the witness' truthfulness, the ambiguity of the testimony and the probable accuracy of the witness' perceptions, observations and memory, and to give greater or lesser weight to said testimony in accordance with such evaluation.
- (5) **Physical Evidence:** Written documents and other physical evidence shall be received upon being identified, authenticated, and upon a showing of relevance to the action.

- (6) **Official Documents:** Official documents or an official law, record or copy thereof, may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof and without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.
- (7) **Record of Excluded Evidence:** In an action tried to a jury, excluded evidence may upon request be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the Judge may receive such excluded testimony into the record.

Section 2-3-10. Harmless and Plain Error.

- (1) Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.
- (2) Errors or defects affecting substantial rights may be recognized and acted upon by the Court even though they were not brought to the attention of the Court by counsel.

Section 2-3-11. Regulation of Conduct in the Courtroom.

Each Judge may regulate the conduct of persons in the courtroom and may forbid the taking of photographs or other visual or audio recordation of proceedings occurring therein.

Section 2-3-12. Motion for Judgment.

- (1) The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect the right to present evidence.
- (2) If a motion for judgment of acquittal is made at the close of all evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.