

TITLE 1
GENERAL PROVISIONS

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**TITLE 1
GENERAL PROVISIONS
CHAPTER 1-1
ADMINISTRATION OF TRIBAL COURT**

PRELIMINARY PROVISIONS

§1-1-1 Definitions

The following definitions will apply to this code:

(a) "Business day" means any day in which the business of the Nez Perce Tribe is normally conducted and excluding weekends and holidays.

(b) "Child or minor" means a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

(c) "Code" shall mean the Code of the Nez Perce Tribe and "chapter" shall mean an individual code chapter such as the "Criminal Offenses Chapter," "Civil Procedures Chapter," etc.

(d) "Guardian ad litem" means a guardian who is appointed to represent a party for the purpose of actual, threatened or contemplated litigation.

(e) "Indian" means a member of any Indian tribe, band, group, pueblo or community recognized by the United States and any Alaskan native as defined in the Alaska Native Claims Settlement Act, 43 U.S.C. §1601-1628.

(f) "In-lieu fishing site" means certain federal lands along the Columbia River designated by the federal government via PL 79-14 for Indian treaty fishing activities in lieu of usual and accustomed fishing placed inundated by construction of Bonneville Dam. (definition was added by NPTEC 5/25/10 the addition changed the numerical order of the following subsections)

(g) "Member of the Nez Perce Tribe" shall include a person whose name appears on the membership roll of the Nez Perce Tribe.

(h) "Nez Perce Tribal Executive Committee," "Executive Committee" or "NPTEC" shall mean the Nez Perce Tribal Executive Committee as described in Article VI of the Constitution and By-Laws of the Nez Perce Tribe.

(i) "Party" means any person having a legal interest in or anything which is the subject of a legal action. A party shall not include any person who may be affected indirectly or consequently by the proceedings but has no legal interest in such proceedings.

(j) "Person" includes but is not limited to, natural persons, corporations, partnerships, trusts, unincorporated business associations, governmental entities, Indian tribes and any other organization or entity involved in private, commercial, or non-profit activity.

(k) "Proceedings" in the Tribal Court shall mean or include all arraignments in criminal cases and all hearings and trials in civil and criminal cases before the Court. (added by NPTEC 1/12/16)

(l) "Reservation" shall include all lands within the exterior boundaries of the Nez Perce Reservation as defined in Article III of the Constitution and By-Laws of the Nez Perce Tribe.

(m) "Treaty fishing access site (tfas)" means certain federal lands along the Columbia River designated or acquired by the federal government via Public Law PL 100-581 for Indian treaty fishing activities in lieu of usual and accustomed fishing places inundated by the construction of Bonneville, The Dalles and John Day Dams. (definition was added by NPTEC 5/25/10 the addition changed the numerical order of the following subsections)

(n) "Tribal Police" means BIA Law Enforcement, tribal police officers, or any other peace officer authorized by the Nez Perce Tribe to enforce the laws of the tribe.

(o) "Tribe" shall mean the Nez Perce Tribe unless another or no specific Indian tribe is clearly intended.

(p) "Court" or "Tribal Court" means the Tribal Court of the Nez Perce Tribe unless another court is clearly intended.

(q) "Tribal member" means any person enrolled as a member of the Nez Perce Tribe unless another tribe is clearly intended.

§1-1-2 Citation

This code shall be known as the Nez Perce Tribal Code and may be cited as "N.P.T.C."

§1-1-3 Constitutional Authority and Name

This code is adopted pursuant to the authority vested in the Nez Perce Tribal Executive Committee under Article VIII of the Constitution and By-Laws of the Nez Perce Tribe.

§1-1-4 Prior Inconsistent Ordinances and Code Provisions Repealed

Any ordinances or codes previously adopted by the Nez Perce Tribal Executive Committee which are in conflict with this code are hereby repealed.

§1-1-5 Principles of Construction

In this code:

(a) masculine words shall include the feminine and singular words shall include the plural and vice versa, unless another meaning is clearly stated;

(b) words shall be given their plain meaning, and technical words shall be given their usually understood meaning where no other definition is specified;

(c) whenever a term is defined for a specific section or chapter, that definition shall apply to all sections and chapters of this code unless a contrary meaning is clearly intended;

(d) provisions shall be construed as a whole to give effect to all its parts (i.e. titles, chapters, sections, etc...) in a logical, consistent manner; and

(e) if any provisions of this code or their application to any person or circumstance is held invalid, the remainder of this code, or the applications of the affected provisions to other persons or circumstances is not affected.

§1-1-6 Records of Court Open to Public Inspection; Exceptions

Except for files and records in adoptions, incompetency proceedings, juvenile court matters and records sealed by court order, the files and records of the courts of the Nez Perce Tribe shall be open for public inspection. The Court may authorize inspection of closed files and records upon motion and showing of extraordinary need.

§1-1-7 Specification of Time for Action

When, pursuant to this code:

(a) the doing of an act within a specified time period is required or authorized, the period of time indicated shall commence on the next day following the act which initiated the time period.

(b) the doing of an act between certain dates, or from one date to another, is allowed or prohibited, the period of time indicated shall include both dates specified. The first date specified designates the first day of the period and the second date specified designates the last day of the period.

§1-1-8 Court and Clerk

(a) The Court shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) All acts or proceedings other than those closed to the public pursuant to this code or sealed by order of the presiding judge shall be done or conducted in open session and on the record, whether conducted at the Court in Lapwai, Kamiah, or at any other place within the reservation. The judge may not engage in ex-parte communications with either party or either party's attorney in a matter which is before the Tribal Court, with the exception of those matters which may be conducted ex-parte pursuant to this Code, or limited communications required for scheduling, administrative purposes or emergencies that do not deal with substantive matters.
(amended by NPTEC 1/12/16)

(c) All motions and application in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the Court are grantable of course by the clerk; but the clerk's action be suspended or altered or rescinded by the Court upon cause shown.

(d) Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in this code upon each party who is not in default for failure to appear and shall make a note in the docket of the mailing. Any party may in addition serve a notice of such entry in the manner provided in this code for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve a party for failure to appeal within the time allowed except as authorized by the Court.

JURISDICTION

§1-1-9 Scope and Extent

The judicial power of the Nez Perce Tribe shall be vested in the tribal judiciary of the Nez Perce Tribe and shall extend to all cases and controversies in law and equity, arising under the Constitution, By-Laws, laws and regulations of the Nez Perce Tribe, or to which an Indian or Indian owned property is a party.

§1-1-10 Territorial Jurisdiction

(a) The territorial jurisdiction of the Nez Perce Tribe shall include all land within the exterior boundaries of the Nez Perce Reservation as defined under Article III of the Nez Perce Tribe's Constitution and By-Laws, and to the greatest extent permissible by law, such other lands as have been or may be added to the reservation, held in trust by the United States for the Nez Perce Tribe or its members or which consist of usual and accustomed fishing locations, in-lieu fishing sites, and treaty fishing access sites (tfas) of the Nez Perce Tribe or open and unclaimed lands. (amended by NPTEC 5/25/10)

(b) The jurisdiction of the courts of the Nez Perce Tribe shall extend beyond the Nez Perce Tribe's territorial jurisdiction as set forth above to the extent permissible by law.

§1-1-11 Original Jurisdiction

The Nez Perce Tribal Court shall have original jurisdiction over all:

- (a) crimes committed by any person to the extent permitted by federal law within the Nez Perce Reservation;
- (b) violations of the Nez Perce Tribe Fish and Game laws committed by a member of the Nez Perce Tribe outside the Nez Perce Reservation at any usual and accustomed fishing place or upon open and unclaimed lands; and
- (c) any and all violations of the Nez Perce Tribal Code committed by a member of the Nez Perce Tribe outside the Nez Perce Reservation at any in-lieu site or any treaty fishing access site (tfas); and (added by NPTEC 5/25/10)
- (d) civil actions at law or in equity, involving any person or entity and arising under the Constitution, By-laws, laws and regulations of the Nez Perce Tribe, or to which an Indian or Indian owned property is a party.

§1-1-12 Personal Jurisdiction

- (a) The Nez Perce Tribe shall have civil jurisdiction over:
 - (1) any person residing or present within the reservation or land protected by treaty with the United States government;
 - (2) any person who transacts, conducts, or performs any business or activity within the reservation by being present on the reservation or by mail, phone, broadcast, cable either in person or by an agent or representative;

- (3) any person who owns, uses or possesses any real or personal property situated within the reservation, for any civil cause of action arising from such ownership, use or possession;
 - (4) any person who commits a tortious act or engages in tortious conduct within the reservation;
 - (5) persons under the age of eighteen (18) years who are eligible for membership in any federally-recognized tribe; (amended by NPTEC 4/28/15)
 - (6) persons under the age of eighteen (18) years who commit a delinquent act to the extent permitted by federal law;
 - (7) children and their parent(s), guardian, legal custodians or other persons with responsibility for or control of the child who leave the exterior boundaries of the reservation and over whom the Court had jurisdiction at the time they left;
 - (8) any real or personal property located on the reservation, the determination of 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; and
 - (9) all causes of action, which involve either the tribe, its officers, agents, employees, property or enterprises, a member of the tribe, a member of a federally recognized tribe, or any other matter which effects the interest or rights of the tribe.
- (b) The Nez Perce Tribe shall have criminal jurisdiction over:
- (1) all crimes committed by any person to the extent permitted by federal law, within the boundaries of the Nez Perce Reservation; and
 - (2) all violations of the Nez Perce Fish and Wildlife Code committed by a member of the Nez Perce Tribe outside the Nez Perce Reservation at any usual and accustomed fishing place or upon open and unclaimed lands.

ESTABLISHMENT OF COURTS; JUDGES AND OTHER COURT PERSONNEL

§1-1-13 Establishment of Court

There is hereby established the Nez Perce Tribal Court. The Court shall exercise the jurisdiction of the Nez Perce Tribe including any civil, criminal or juvenile action.

§1-1-14 Appointment and Number of Judges of the Nez Perce Tribal Judiciary

The Nez Perce Tribal Court shall consist of one chief judge and as many associate judges as the Nez Perce Tribal Executive Committee shall appoint.

§1-1-15 Judges - Probationary Period; Selection and Training

- (a) The Nez Perce Tribal Executive Committee shall appoint for a probationary term

of ninety (90) days, a chief judge and one or more associate judges who shall be empowered to act in the absence of the chief judge. During such probationary term, the chief judge or any associate judge may be removed by the Nez Perce Tribal Executive Committee without cause.

(b) Following satisfactory completion of their probationary term, judges may be appointed by NPTEC to a regular term of four years; provided that during such term, a chief judge or associate judge may be removed by NPTEC for cause.

(c) Any judge may be reappointed for any number of terms by the Nez Perce Tribal Executive Committee. Any judge who is not subject to removal for cause **may** be reappointed for a subsequent term of 4 years.

(d) The Chief and Associate Judge(s) of the Tribal Court shall be required to complete and provide to the Law and Order Executive Officer evidence of completion of 30 hours of state-bar approved Continuing Legal Education (CLE) training every three years, including no less than 10 hours of state-bar approved CLE training in subject matter relevant to the practice of law before a tribal court, and no less than 3 hours of ethics training as a minimum for continuing in their positions. (amended by NPTEC 1/12/16)

§1-1-16 Eligibility of Persons to Serve as Judges

(a) Any person, who has attained the age of twenty-five years, has graduated from an accredited law school, is a member of the bar of any state and has 3 years of judicial experience and/or has at least 10 years of experience as a practicing attorney shall be eligible to serve as chief judge of the Tribal Court. When there are otherwise equally qualified candidates for chief judge, those persons who have experience in tribal courts will be given preference in hiring decisions. (Amended by NPTEC 09/13/2022)

(b) Any person, who has attained the age of twenty-five years, has graduated from an accredited law school and is a member of the bar of any state shall be eligible to serve as an associate judge of the Tribal Court. Prior experience as a judge or in litigation shall be preferred.

(c) The chief judge may appoint a judge pro tempore of the Nez Perce Tribal Court as necessary. A judge pro tempore shall meet the minimum requirements of an appointed associate judge with tribal court experience preferred. (Amended by NPTEC 12/26/12)

(d) No person having been convicted of a crime shall be eligible to be chief judge or associate judge of the Tribal Court.

§1-1-17 Judges' Duties and Powers

(a) The chief judge shall have general supervisory powers over the Tribal Court.

(b) The chief judge may assign an associate judge or a judge pro tempore to hear and adjudge a particular case. A judge designated by the chief judge shall hear and determine each matter filed in the Nez Perce Tribal Court. If the chief judge is a party to any case before the Tribal Court or Court of Appeals, the most senior associate judge shall appoint a judge pro tempore to hear and adjudge that case.

(c) The chief judge shall be responsible for administration of the courts, shall assign cases, and insure management of the Court's calendar and business. The chief judge may

designate an associate judge to act in his absence.

(addition of subsection (d) and (e) adopted by NPTEC 5/28-29/02)

- (d) The chief judge shall prescribe all necessary rules concerning:
 - (1) The application process for the selection of Tribal Court of Appeals justices.
 - (2) Training of Tribal Court judges, Tribal Court of Appeals justices, and court clerks.
 - (3) The operation of the Tribal Court, subject to the rules being in compliance with NPTEC-approved administrative policies and procedures for the Court's operation. (amended by NPTEC 1/12/16)
 - (4) The operation of the Tribal Court of Appeals.

The rules shall be approved by the Nez Perce Tribal Executive Committee prior to becoming effective and shall be consistent with the provisions of this Code.

(e) On an annual basis, the chief judge with the assistance of the associate judges shall submit a report to the Nez Perce Tribe Office of Legal Counsel of recommended amendments to the Nez Perce Tribal Code, which are deemed necessary for the efficient function of the Tribal Court, the Tribal Court of Appeals, and the exercise of justice.

§1-1-18 Removal of Judges or Justices for Cause (section amended by NPTEC action 5/28-29/02)

(a) In order to remove a judge of the Tribal Court or a justice of the Court of Appeals for cause, a written complaint recommending such removal for cause shall be prepared by the Nez Perce Tribal Executive Committee Office of Legal Counsel at the direction of the Nez Perce Tribal Executive Committee Chairman. Such complaint shall set forth with specificity the facts constituting the basis for such removal. Copies of such complaint shall be delivered to the accused judge or justice, the Nez Perce Tribal Executive Committee, and the Law and Order Subcommittee.

- (b) Sufficient cause for such action shall include any of the following:
 - (1) use of intoxicants or illegal drugs while on duty or to the extent that the person's capacity to perform duties of the position are impaired;
 - (2) behavior reflecting adversely on the position of the judge or justice of the Nez Perce Tribe, or subject to sanction by the licensing authority of the State in which the judge or justice is licensed to practice law or constituting a violation of the Code of Judicial Conduct approved by the American Bar Association;
 - (3) conviction of any offense other than minor traffic violations;
 - (4) desertion of office;
 - (5) blatant and repeated violations of the civil rights of persons appearing before the Tribal Court or Court of Appeals; or

- (6) a pattern of undignified and/or discourteous conduct towards litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity; (added by NPTEC 1/12/16)
- (7) failure to maintain licensure in good standing with a state bar; or (added by NPTEC 1/12/16)
- (8) the judge or justice fails to comply with his oath of office and duties.

(c) The complaint shall be investigated by an independent investigator hired by the tribe who shall report his findings and recommendations within ten (10) business days to NPTEC.

(d) A hearing shall be held by NPTEC within ten (10) business days after its receipt of the report from the Office of Legal Counsel and after due notice to the judge or justice involved. At the hearing, the accused judge or justice shall be provided the opportunity to hear and answer all charges made against him, and to present evidence in his defense. Removal can occur only with a majority vote by the members of NPTEC. An action taken by NPTEC to remove a judge or justice is final and not subject to any appeal.

(e) The court clerk shall report any removal for cause under this section to the state bar or bars of which the removed judge or justice is a member.

(f) The chief judge shall periodically review the qualifications of all judges and justices to ensure that continue to be qualified to continue in their duties.

- (1) If the chief judge determines that a judge or a justice is no longer qualified to serve as judge or justice, the chief judge shall provide a written report setting forth with specificity the reasons to NPTEC.

§1-1-19 Disqualification or Incapacity

(a) A judge shall disqualify himself from acting in any judicial proceeding in which he has any direct interest or when any party in the proceeding is a relative by marriage or blood in the first or second degree. A judge may otherwise disqualify himself when he believes he is unable to be an impartial fact finder in any case.

(b) Disqualification of a judge may be petitioned for by any party to a proceeding by filing a motion setting forth with specificity the reasons for the disqualification. The judge shall refer such a petition to another judge for decision. Such a motion shall only be granted when an actual basis exists that indicates that actual conflict or bias exists so as the judge will be unable to be impartial in a case. (amended by NPTEC action 5/28-29/02)

- (1) If such a motion to disqualify is denied, the case shall be heard by the original judge in question.

(c) In case of death, illness, incapacity or removal of an associate or pro tempore judge during the course of a trial, the chief judge shall order a new trial and designate another judge to preside.

§1-1-20 Nez Perce Court of Appeals (amendments to section approved by NPTEC 5/28-29/02)

- (a) The Nez Perce Tribal Court of Appeals is hereby established and granted
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jurisdiction to hear and determine all appeals from the Nez Perce Tribal Court. Unless otherwise prohibited by this Code or other regulations, ordinances, or resolutions, a party aggrieved by a final judgment or order of the Tribal Court shall be entitled to appeal to the Nez Perce Court of Appeals. The Appeals Court shall:

- (1) consist of three (3) justices who have not participated in the case being appealed and are selected randomly by the chief judge. If the decision being appealed is that of the chief judge, an associate judge shall randomly select the justices;
- (2) hear an appealed case and other motions via telephonic or video hearing;
 - (A) A party may move in a timely fashion to have an appealed case or other motion heard at the location of the Nez Perce Tribe Court by demonstrating a compelling reason why such a request is necessary to prevent prejudice to the movant. Any hearing on such a motion shall be via telephone or video conference.
- (3) delegate a presiding justice to be chosen by the three (3) justice panel;
- (4) rule on all properly filed motions filed during the pendency of an appeal no later than two (2) weeks before a scheduled hearing on the merits of the appeal; and
- (5) issue written appellate opinions within three (3) months of the appeals hearing that comply with NPTC § 2-9-8.

(b) Any person who has attained the age of twenty-five years, has graduated from an accredited law school, is a member in good standing of the bar of any state, and has at least three years of legal experience shall be eligible to serve as a justice for the Nez Perce Court of Appeals.

(c) The chief judge shall nominate all candidates to serve as justices to the Nez Perce Tribal Executive Committee for confirmation and approval.

(d) Justices of the Nez Perce Court of Appeals are subject to removal for cause as provided in NPTC § 1-1-18.

(e) A justice shall disqualify himself from acting in any judicial proceeding in which he has any direct interest or when any party in the proceeding is a relative by marriage or blood in the first or second degree. A justice may otherwise disqualify himself when he believes he is unable to be unbiased in any case.

- (1) Any party may move to disqualify a justice by setting forth with specificity the reasons for the disqualification. Such a motion shall only be granted when evidence of an actual conflict or bias exists.
- (2) A motion to disqualify a justice shall be referred to the Chief Judge of the Tribal Court, who shall only hear the issue of disqualification.

(f) In case of death, illness, incapacity or removal of a justice, the Chief Judge shall designate another justice to preside and may grant other necessary relief as necessary to avoid

prejudice to a party.

§1-1-21 Court Clerks

(a) The court clerk and any deputy clerks shall be appointed in accordance with tribal policies and procedures.

(b) The court clerk and any deputy clerks shall:

- (1) be twenty-one (21) years of age or older and of good moral character;
- (2) have never been convicted of a felony or of a misdemeanor within the year prior to appointment;
- (3) have demonstrated competence in the skills essential to the preparation and maintenance of court records, including word processing and
- (4) computer docketing skills, filing skills and basic understanding of court procedure;
- (5) have obtained a high school diploma or equivalent experience;
- (6) be bondable; and
- (7) be a notary public or become a notary public within six (6) months following hiring.

§1-1-22 Duties of the Court Clerk

The court clerk and any deputy clerks shall:

- (a) supervise the receipt and maintenance of all court records, files and dockets;
- (b) keep a record of all proceedings of the Court;
- (c) administer oaths and affirmations;
- (d) collect and account for all fines, bail or bond money, fees or other funds which come to the Court, issue receipts and promptly deliver such funds to the finance department;
- (e) assist the Court in the preparation and issuance of documents at the direction of any tribal court judge; and
- (f) perform other functions as directed by the chief judge.

§1-1-23 Indian Child Welfare Worker

NPTEC shall appoint an Indian child welfare worker to carry out the duties and responsibilities set forth in this code and to perform such other duties in connection with the care or custody of children as the Court may require.

§1-1-24 Case Worker

A case worker shall be a case worker or social worker employed by or authorized to act on behalf of the tribe to carry out the duties and responsibilities set forth in this code and to perform such other duties in connection with the welfare of individuals as the Court may require.

§1-1-25 Court Rules

The Nez Perce Tribal Court and all courts established under this chapter may from time to time prescribe rules for the conduct of court business. Such rules shall be consistent with and supplement the NPTEC-approved policies and procedures, manuals, handbooks, etc., for the operation of the Tribal Court as well as the rules of procedure and other provisions of this code. Copies of such rules shall be made available for public inspection and copying. (amended by NPTEC 1/12/16)

JURORS

§1-1-26 Master List of Eligible Jurors and Selection of Jury Pool

- (a) Master List. The court administrator shall be responsible for maintaining a master list of eligible jurors and updating it annually. This master list of eligible jurors shall include persons identified through tribal enrollment records, tribal employment records, county voting registration records, or other available public records.
- (b) Eligibility. The following persons are eligible for jury service in the Nez Perce Tribal Court:
 - (1) All tribal members residing within the 1855 reservation boundaries who are eighteen (18) years or older; and
 - (2) Any person age eighteen (18) years or older who is an employee of one of the Nez Perce Tribe's entities: Nez Perce Tribal Government, Nez Perce Law and Justice Department, Nimiipuu Health, Nez Perce Tribal Enterprises or Nez Perce Tribal Housing Authority; and
 - (3) Any person, Indian or non-Indian, living within the 1863 reservation boundaries who are eighteen (18) years or older.
- (c) Selection of Jury Pool. On the second Tuesday of January of each calendar year, the court administrator shall randomly select at least one hundred and fifty (150) names from the master list of eligible jurors to create a jury pool.
 - (1) This annually selected list shall comprise the trial jury pool list for the ensuing calendar year from which jury panels shall be selected from time to time.
 - (2) Upon depletion of eligible jurors from a jury pool such that a jury panel cannot be drawn, the court administrator may create an additional jury pool, selected in the same manner as the initial annual selection of a jury pool.
 - (3) The selection of a jury pool from the list of eligible jurors shall be by lot or some other means of random impartial selection, shall reflect a fair cross section of the community, and shall not systemically exclude any distinctive group in the community.
- (d) Selection of Jury Panel. For each matter before the court requiring a jury trial, the

court administrator shall randomly select and summon no fewer than 18 persons from the jury pool to create a jury panel.

- (1) Members of the jury pool who have already served as member of an empaneled jury within the same calendar year shall be exempt from being subsequently summoned for additional jury panels.
- (2) The selection of the jury panel from the jury pool shall be by lot or some other means of random impartial selection, shall reflect a fair cross section of the community, and shall not systematically exclude any distinctive group in the community.

§1-1-27 Time and Manner of Notification

- (a) Each person selected for the jury pool shall be notified by U.S. mail, personal service, or by electronic means reasonably probable to give actual notice to the individual of their selection to the jury pool. This notice shall include information and instructions relating to their service on the jury pool.
- (b) Those persons who are selected to serve on a jury panel shall be notified at a reasonable time prior to the trial date and the jury summons shall state the date, time, and place they are to report for jury duty. Written notice shall be made by U.S. mail, personal service, or by electronic means reasonably probable to give the individual actual notice of their selection to the jury panel.
- (c) Proof of Notification. The person providing notification to those selected for jury pools and jury panels shall provide proof of notification to be filed with the court.
 - (1) Proof of mailing, or proof of personal service shall be accomplished as required by the rules of civil procedure.
 - (2) Electronic service must be effected by transmitting copies of the notice or summons at the person's electronic address or the person's electronic account associated with email, text messaging, social media direct messaging applications, or other direct messaging technologies.
 - (3) Sworn proof of electronic service must be filed with the court by the person who effected service. Proof of electronic service must be supported by read-receipt mechanisms, a response, a sworn statement from the person who effected service verifying transmission and any follow-up communications such as email or telephone contact used to further verify, or any other facts upon which the court finds, by a preponderance of the evidence, that the person received the electronic notice.

§1-1-28 Exempt from Jury Duty

- (a) The following persons are exempt from jury duty:
 - (1) Nez Perce Tribal Executive Committee (NPTEC) Members – tribal members who are actively sitting as NPTEC members shall be exempt from jury service.

- (2) Members of police departments, to include police officers, jail staff, and civil officers.
- (3) Employees of the Court, Public Defender's Office, and Prosecutor's Office.
- (4) Persons who have served on an empaneled jury within the same calendar year.

§1-1-29 Excusing; Postponing Jury Duty; Eligible Volunteers

- (a) In addition, the judge may excuse the prospective jurors as described below:
 - (1) A person who is sixty-five (65) years of age or older excused if the person indicates that they wish to be excused. This excusal shall be permanent.
 - (2) Anyone who is incapable, by reason of mental or physical infirmity, of rendering satisfactory jury service.
- (b) The judge may determine that the person requesting to be excused, may instead have their jury service postponed.
- (c) Volunteers. Should the court find that an insufficient number of prospective jurors appear, or challenges for cause or preemptory challenges leave the court with an insufficient number of jurors, the court may call for volunteers who meet eligibility to appear for jury service.
 - (1) Should a person volunteer and be selected to serve, their jury service shall be counted as complete for that calendar year.

§1-1-30 Compensation of Jurors

Each juror who is called and reports for jury duty or who serves on a jury may be entitled to receive such fees for daily service and/or mileage if any, as established by court rule, at the Court's discretion and based on funding availability.

§1-1-31 Number of Jurors

- (a) A jury shall consist of six (6) persons seated from the summoned jury panel. The Court may allow one or two additional jurors to be chosen as alternate jurors. In the event an alternate juror is chosen they shall be treated as a regular juror in all respects unless dismissed by direction of the Court prior to the jury's deliberation.
- (b) When the jury has been seated, the jurors' oath shall be administered by the Court.

§1-1-32 Verdict of Jury

- (a) Criminal. The verdict of the jury must be unanimous in a criminal case.
- (b) Civil. The verdict of the jury may be rendered by a majority vote of four (4) jurors in a civil case.

- (c) **Mistrial.** In the event the jury shall be unable to agree upon a verdict within a reasonable period of time and shall declare to the Court that they are hopelessly deadlocked, the Court shall declare a mistrial and discharge the jury. In the event a mistrial is declared and the jury discharged, the case shall be set for a new trial before a different jury as soon as practicable unless the prosecution should move the Court for dismissal of the case, and such motion is granted by the Court.

§1-1-33 Alternate Jurors

In the absence of an alternate and the failure of the parties to stipulate to continue the trial with five (5) or less jurors, the jury shall be discharged, and a new jury shall be formed to hear the case.

§1-1-34 Examination of Jurors

(a) **Preliminary Examination by Court.** Prior to voir dire examination by the parties or their attorneys, the Court may conduct a preliminary examination of all prospective jurors. Following examination of the jury by the Court, if any, the plaintiff and defense, in that order, shall have the opportunity to ask questions of the prospective jurors to determine if there is any reason why a particular candidate for the jury should not be seated as a juror.

(b) **Challenge For Cause.** Either party may challenge any prospective juror for cause based upon bias or inability to sit as a fair and impartial juror. The Court shall make all final determinations of law and fact on any challenges for cause. The number of challenges for cause by either party is unlimited.

(c) A person is unable to sit as a fair and impartial juror if they:

- (1) Do not meet the eligibility requirements for jury service; or
- (2) Are incapable, by reason of physical or mental disability of rendering satisfactory jury service;
- (3) Are unable to read, speak, and understand the English language; and
- (4) Have lost their right to vote because of criminal conviction in a court of competent jurisdiction.

(d) A person is biased under this section if they have a state of mind in reference to the case, or to either of the parties which in the exercise of a sound discretion on the part of the Court, leads to the inference that they will not act with entire impartiality.

(e) **Preemptory Challenges.** When both sides have completed their voir dire questioning of the prospective jurors and alternates, each side shall exercise its preemptory challenges.

- (1) Each party shall have up to four (4) preemptory challenges with which they may disqualify any prospective juror and need not state any reason for so doing.

- (2) The parties shall alternate on their use of preemptory challenges, with the plaintiff being first to exercise a preemptory challenge.

§1-1-35 Oath to Trial Jury

After the six (6) members of the jury and any applicable alternate(s), have been selected and seated, the Court shall administer an oath by which the jury swears or affirms that they will give careful attention to the proceedings, act fairly and impartially in the trial, abide by the court's instructions, and render a verdict in accordance with the law and evidence presented to them.

ATTORNEYS; LEGAL INTERNS

§1-1-36 Attorneys – Admission

(a) Any person appearing as a party in any civil, criminal or juvenile action shall have the right to be represented by an attorney of his own choice at his own expense.

(b) Any attorney who is licensed to practice in any state or the District of Columbia is eligible to be admitted to practice before the courts of the Nez Perce Tribe.

(c) To practice before the courts of the Nez Perce Tribe, an attorney must certify:
(amended by NPTEC 1/12/16)

- (1) that he is eligible to be admitted to the Court;
- (2) that he will abide by the rules of the courts of the Nez Perce Tribe and any orders issued by such courts; and
- (3) that he has never in the past been convicted of any crime.

(d) Upon receipt of an application for admission to practice before the courts of the Nez Perce Tribe, the chief judge shall review the application and may investigate into the truth of the matters contained therein. If satisfied that the applicant meets the qualifications set forth herein, the chief judge shall notify the attorney that he has been admitted to practice.

(e) The chief judge shall require any attorney admitted to practice before the courts of the Nez Perce Tribe to take the following oath either orally or in writing:

"I do solemnly swear (or affirm) that I will support the Constitution and laws of the United States and support and defend the Nez Perce treaties, constitution and laws of the Nez Perce Tribe, and that I will maintain proper respect for the courts and judicial officers of the Nez Perce Tribe."

(f) An attorney may appear in person to take the oath prescribed herein or may subscribe his signature to the oath and forward it to the chief judge. Upon administering the oath, the Court shall issue a certificate of admission to practice before the courts of the Nez Perce Tribe.

(g) All persons employed as attorneys in the Law and Justice Department shall be required to complete and provide to the Law and Order Executive Officer evidence of completion of 30 hours of state-bar approved Continuing Legal Education (CLE) training every three years, including no less than 10 hours of state-bar approved CLE training in subject matter relevant to the practice of law before a tribal court, and no less than 3 hours of ethics training as

a minimum for continuing their positions. (added by NPTEC 1/12/16)

§1-1-37 Attorneys – Suspension

(a) The chief judge may suspend or disbar any attorney from practice before the courts of the Nez Perce Tribe after due notice and a hearing if such attorney shall be found guilty of the following:

- (1) a violation of his oath to the Court;
- (2) suspension or disbarment from practice before any state, federal or tribal court;
- (3) a violation of the rules of professional conduct of any state bar to which he is a member; and
- (4) the conviction of a felony. (amended by NPTEC 2/14/17)

(b) All suspensions and disbarments from practicing before the Nez Perce Tribal Court shall be for a period as determined by the judge.

(c) The court clerk shall report all suspensions and disbarments from the Tribal Court to the licensing authority of each jurisdiction in which the affected attorney is licensed.

(d) Any attorney who has been suspended from the Nez Perce Tribal Court may appeal to the Nez Perce Tribal Court of Appeals.

§1-1-38 Attorneys - Annual Fees

As a condition of admittance to practice before the courts of the Nez Perce Tribe, an attorney shall pay a fee of \$50.00 unless waived by the tribal court chief judge. On February 1st of each year thereafter, the attorney shall pay to the Court \$50.00 as an annual fee. Any attorney failing to pay such annual fee by February 1 of each year shall forfeit the right to practice before the courts of the Nez Perce Tribe until formally readmitted. The Chief Court Clerk/designee shall keep timely and accurate records of attorneys admitted to practice in the Court and shall remove all attorneys from the admittance list who have not paid annual fees as required herein by February 1 of each year and notify the attorney in writing of his or her removal from the admittance list. (amended by NPTEC 1/12/16)

§1-1-39 Attorneys – Pro Hac Vice

A judge of a court of the Nez Perce Tribe may waive the formal admission procedure and payment of the annual fee as required herein only on motion of an attorney making an appearance for the limited purpose of a single, specific case, and only if such attorney is associated in such case with an attorney who is formally admitted to practice before the courts of the Nez Perce Tribe. Any attorney wishing to appear in Tribal Court under this section shall submit a \$50.00 filing fee with the motion provided above.

§1-1-40 Court Bar Roster

The clerk of the Court of the Nez Perce Tribe shall maintain a roster of all attorneys admitted to the Tribal Court.

§1-1-41 Legal Interns

Any person who has obtained a legal intern license under the Idaho State Bar Commission Rules shall be eligible to practice in the Nez Perce Tribal Court provided the supervisory attorney of any such person is eligible to practice before the Court. A legal intern admitted to practice before the Tribal Court under this section shall be considered an attorney while engaged in such practice and for the purposes of this code.

§1-1-42 Law and Order Executive Officer, Nez Perce Tribal Prosecutor, Deputy Prosecutor, and Public Defender, Conflict Prosecutor and Public Defender, Child Support Enforcement Attorney-Appointment and Duties (section amended by NPTEC 1/12/16)

(a) Prior to the beginning work for the Tribe, the following positions must be appointed by resolution of Nez Perce Tribal Executive Committee:

- (1) the Law and Order Executive Officer (LOEO) to oversee the Law and Justice Department (Department). The LOEO shall directly supervise the Chief Judge, Tribal Prosecutor and Tribal Public Defender, conflict Prosecutor(s) and Public Defender(s) and other program managers in the Department in regards to administrative matters, and have the authority to develop comprehensive written policies and procedures which must be approved by the NPTEC, as well as other documents such as written guidelines to assure the integrity, fairness, consistency, independence, timeliness and transparency of all entities within the Law and Justice Department. The LOEO shall be law-trained and possess a license to practice law from any state.
- (2) the Prosecutor and Deputy Prosecutor(s) for the Nez Perce Tribe to pursue criminal prosecutions and other matters on behalf of the Nez Perce Tribe. The Prosecutor and any Deputy Prosecutor(s) shall be law trained and possess a license to practice law from any state.
- (3) the Public Defender and Deputy Public Defender(s) for the Nez Perce Tribe to provide free public defense services to eligible criminal defendants in the Nez Perce Tribal Court. The Public Defender and any Deputy Public Defender(s) shall be law trained and possess a license to practice law in from any state.
- (4) Conflict Public Defender(s) and Conflict Prosecutor(s), who shall be law-trained and possess a license to practice law in any state. These attorneys may represent either the Nez Perce Tribe or eligible criminal defendants in the Nez Perce Tribal Court when a conflict of interest exists for both the Prosecutor and the Deputy Prosecutor, or for both the Public Defender and the Deputy Public Defender, in a case before the Nez Perce Tribal Court. Prior to appointment in any case, conflict counsel must be under a contract approved by resolution of the NPTEC.
- (5) a Child Support Enforcement attorney(s) who shall be law-trained and possess a license to practice law in any state to assist in the enforcement of laws pertaining to the Tribe's Child Support Enforcement Program.

(b) No such attorney shall be appointed unless the appointee is admitted to practice before the Court as provided herein.

(c) The Prosecutor and Public Defender and any conflict Prosecutor(s) or Public Defender(s) shall be under the supervision of the Law and Order Executive Officer, the Deputy Prosecutor and the Child Support Enforcement Attorney shall be under the supervision of the Prosecutor, and the Deputy Public Defender shall be under the direct supervision of the Public Defender. Decisions regarding which cases will be charged and the manner in which prosecution is conducted will be made at the discretion of the Prosecutor/conflict Prosecutor. Decisions regarding the manner in which a defense is to be conducted will be made at the discretion of the Public Defender/conflict Public Defender.

(d) The Prosecutor/Deputy Prosecutor is authorized to represent the tribe in the prosecution of all civil infractions, criminal prosecutions, and juvenile matters. The Prosecutor shall make all final decisions on the submission of complaints or other legal action to be taken in the prosecution of cases.

(e) The Public Defender is authorized to represent adult and juvenile tribal members charged with a crime or crimes in the Tribal Court and civil matters before the Court, under the Nez Perce Tribal Code, so long as the opposing parties in a civil matter are not both Nez Perce tribal members. The Public Defender may also represent other eligible defendants in Tribal Court in cases where the Nez Perce Tribe has jurisdiction over that defendant. The Public Defender shall zealously represent his or her clients as required by the rules of professional conduct in the jurisdiction in which he/she is licensed to practice law.

CONTEMPT

§1-1-43 Acts or Failures to Act Which Constitute Contempt of Court

Any person may be held in contempt of court for any of the following reasons:

(a) disorderly or contemptuous or insolent behavior, committed in immediate view and presence of any tribal court which interrupts its proceedings;

(b) any breach of the peace, noise or other disturbance which interrupts the proceedings of the Court;

(c) disobedience or resistance to any process, judgment, summons or order lawfully issued by the Court;

(d) misbehavior in office, or other willful neglect or violation of duty as an attorney or a clerk, court administrator, police officer or other person appointed, elected, or hired to perform a representative, judicial or ministerial service in connection with the operation of the Court;

(e) deceit or abuse of process of the Court by a party or attorney to a judicial proceeding;

(f) acting as an attorney, officer, spokesman or official of the Court without authority;

(g) refusing to be sworn or answer as a witness; and

(h) any other interference with the process, proceedings, or dignity of the Court or a judge of the Court while in the performance of his official duties.

§1-1-44 Civil Contempt

(a) A civil contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform, or a past act which violates a Tribal Court rule or the authority of the Court.

(b) Relief in a civil contempt proceeding may include:

- (1) a fine payable to the Court; or
- (2) the imposition of a fine or imprisonment for the purpose of coercing performance. Such fine or imprisonment shall remain in effect for so long as the party in contempt has the ability to comply with the Court order or directive.

§1-1-45 Criminal Contempt

(a) Criminal contempt is a past act which knowingly or willfully violates a Tribal Court rule or the authority of the Court.

(b) Criminal contempt is an offense which may be punishable by a fine or imprisonment.

§1-1-46 Contempt Procedure

(a) 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 as such may be adjudged and punished summarily.

(b) All other contempts shall be determined at an outside hearing. Notice of the hearing shall be given orally by the judge in open court in the presence of the defendant, upon the filing of a complaint by the prosecutor, by an order to show cause or the issuance of an arrest warrant. The notice shall state:

- (1) the time and place for the contempt hearing, allowing a reasonable time for the preparation of the defense;
- (2) the exact contempt charges and the essential facts constituting such charges;
- (3) whether the contempt proceedings are civil or criminal as provided by this chapter; and
- (4) the sanctions which may be imposed against the defendant.

(c) In proceedings involving other than direct contempt cases:

- (1) the defendant in a criminal contempt proceedings shall have the right to a jury trial in any case where the punishment to be imposed may exceed six (6) months;

- (2) if the charge involved disrespect to or criticism of a judge, such judge is disqualified from presiding at the trial or hearing except with the defendant's consent.

SOVEREIGN IMMUNITY

§1-1-47 Sovereign Immunity (addition authorized 10/9/01)

(a) Except when explicitly and unequivocally provided in this Code or specifically waived by a resolution of the Nez Perce Tribal Executive Committee specifically referring to such a waiver, the Nez Perce Tribe shall be immune from suit in any civil action, and its officers and employees immune from suit for any liability arising from the performance of their official duties.

(b) Any waiver of sovereign immunity shall be narrowly construed and any ambiguities in any waiver of sovereign immunity shall be construed in favor of the Nez Perce Tribe.

CHOICE OF LAW (section added by NPTEC 12/24/02)

§1-1-48 Choice of Law

(a) When choosing what law applies, the Tribal Court and Tribal Court of Appeals shall apply the law of the Tribe except to the extent that federal law governs. In construing and applying the Nez Perce Tribal Code or other tribal regulations, ordinances, or resolutions, the Tribal Court and Tribal Court of Appeals shall consider Nez Perce Tribal Code or other tribal regulations, ordinances, or resolutions first and secondly, tribal case law.

(b) To the extent no law of the Tribe is applicable, the Tribal Court and Tribal Court of Appeals shall consider and, if appropriate, apply customs and traditions of the Tribe as they are relevant to the controversy.

(c) The Tribal Court and Tribal Court of Appeals may consider other tribal and federal laws and procedures as persuasive authority in ruling on questions of procedure and case law of other tribal and federal courts as persuasive authority in ruling on questions of substance. In the absence of any persuasive tribal or federal authority, the Tribal Court and Tribal Court of Appeals may look to the statutes or case law of the states for guidance.

**CHAPTER 1-2
SMALL CLAIMS**

§1-2-1 Scope and Purpose

(a) The purpose of this chapter is to provide an alternative means of resolving disputes for the parties to appropriate civil lawsuits. Specifically, this chapter will allow individuals to save time and costs by reaching early resolution of cases in an informal setting without sacrificing the quality of justice.

(b) This chapter shall apply only to claims for money damages of \$3,500 or less including interest or property disputes in which the property involved is valued at \$3,500 or less. No appeal shall be available from the judge's decision under this chapter and the losing party shall be responsible for the payment of court costs.

§1-2-2 Procedure

(a) A party may petition the Tribal Court for a hearing under this chapter or, at any time prior to trial, request that rather than continue with formal litigation proceedings the matter be submitted to small claims proceedings.

(b) A request or petition for small claims proceedings shall be submitted to the Tribal Court in writing, signed by the party submitting the request or petition and shall include:

- (1) the names and addresses of the person(s) requesting the proceedings;
- (2) the names and addresses of any other person(s) involved in the dispute that could contribute to resolution of the matter; and
- (3) a short statement of the problem involved and the reason the proceedings are requested.

(c) If formal litigation proceedings have already been instigated and based upon the best interest of all parties involved and whether significant and complex issues of law exist, the judge, prior to the date set for trial:

- (1) shall grant or deny a request for small claims proceedings; and
- (2) may transfer an eligible case to small claims proceedings regardless of whether a request has been submitted.

§1-2-3 Mediation and Hearings (amendment to section adopted by NPTEC 5/28-29/02)

(a) Upon petition to the Court, all small claims proceedings are subject to mandatory court-ordered mediation established pursuant to NPTC Chapter 1-3 prior to any hearing.

(b) If no agreement is reached through mediation, the Mediator shall file a written report signed by the parties with the Court stating that the parties were unable to reach an agreement, and the clerk shall set a date for a small claims hearing within twenty (20) business days after the Mediator contacts the court. The date for hearing shall not be changed except for extreme and unanticipated emergencies as established in writing and approved by the judge assigned to the case. The Court shall issue a notice of the petition or request for transfer which shall be served upon the other party in the manner provided by the Rules of Civil Procedure.

(c) At least ten (10) business days prior to the hearing, each party shall submit a detailed summary of his position together with copies of all documents including medical reports, bills, records, photographs and any other materials supporting the party's claim to the opposing party by certified mail and the clerk of the Court.

(d) Each individual party shall attend the hearing in person. Corporations, governmental bodies, or other entities shall be represented at the hearing by an officer or other person. Attorneys shall be barred from participating in any small claims proceedings. During the hearing, the parties may call and subpoena witnesses and present evidence on their behalf. Following the hearing, the Court shall decide the matter in dispute and issue a judgment.

CHAPTER 1-3
ALTERNATIVE DISPUTE RESOLUTION
(amendments to chapter adopted by NPTEC 5/28-29/02)

§1-3-1 Scope and Purpose

The purpose of this chapter is to provide an alternative means of resolving disputes for the parties to certain civil lawsuits. Specifically, this chapter will allow individuals to save time and costs by reaching early resolution of cases in an informal setting without sacrificing the quality of justice. Mediation is a process by which a neutral mediator appointed by the court or agreed to by the parties in reaching a mutually acceptable agreement. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement. The decision made is that of the parties, not of the mediator. No appeal shall be available from an agreement reached by the parties under this chapter.

§1-3-2 Matters Subject to Mediation

(a) All small claims cases defined in NPTC Chapter 1-2 are subject to mandatory court-ordered mediation prior to trial.

(b) All civil domestic relations matters involving a controversy over custody or visitation of minor children are subject to mediation by agreement of the parties prior to trial.

(c) The Court has the discretion to order mediation in other civil cases prior to trial where the Court believes such mediation is in the best interests of all the parties and is not otherwise inappropriate under the facts of the particular case.

(d) The parties to any civil action may petition the Tribal Court for mediation at any time prior to trial.

(e) Matters involving housing or gaming disputes, employment termination, domestic relations matters where domestic violence is alleged, and any dispute where there is a risk of severe prejudice to a party from delay are exempt from this Chapter.

§1-3-3 Application

(a) The parties to a civil action who have petitioned the Court for mediation shall submit their request to the Tribal Court in writing, signed by all parties to the dispute including:

- (1) the names and addresses of the parties;
- (2) the names and addresses of any other persons involved in the dispute who may contribute to resolution of the matter; and
- (3) a short statement of the problem involved, and the reason mediation is requested.

(b) The judge:

- (1) shall grant or deny a request for mediation;

- (2) may refer an eligible case to mediation regardless of whether a request has been submitted; or
- (3) once mediation is granted or otherwise imposed, shall stay the proceedings in the litigation unless the parties agree to lift the stay.

(c) Any action may be exempt or withdrawn from mediation by the presiding judge at any time upon a determination that, for any reason, the case is not suitable for mediation.

§1-3-4 Certification and Compensation of Mediators

(a) The chief judge shall compile a list to be maintained by the clerk of court of persons certified as mediators. An individual may be certified as a mediator if he:

- (1) is determined by the chief judge to be qualified and competent to perform the duties of a mediator based on experience and official training;
- (2) has read and understands this Code and all applicable ethical standards;
- (3) takes the following oath either orally or in writing:

"I do solemnly swear (or affirm) that I will support the Constitution and laws of the United States and support and defend the Nez Perce Treaties, Constitution and laws of the Nez Perce Tribe, and that I will maintain proper respect for the Courts and Judicial Officers of the Nez Perce Tribe."

(b) The chief judge may require additional training of certified mediators if deemed necessary and appropriate.

(c) Mediators shall be paid a fee of \$10.00 per day and shall be reimbursed for expenses reasonably incurred. At the time when the mediator files his report, or when a case is withdrawn from mediation, the mediator shall submit a voucher on the form prescribed by the clerk for payment of compensation and reasonable expenses necessarily incurred in the performance of his duties. In determining whether actual expenses incurred are reasonable, the mediator shall be guided by the limitations placed upon travel and subsistence expenses of tribal employees in accordance with tribal policy and procedures. All mediator costs shall be borne by the parties. Where the court orders mediation, the party's filing fee shall be applied to the costs of the mediator.

§1-3-5 Selection of Mediator for Individual Cases

A certified mediator may be chosen to mediate a dispute by written agreement of the parties. If the parties do not select a mediator, one shall be appointed by the chief judge.

§1-3-6 Disqualification

- (a) A mediator shall be disqualified to preside at mediation if he:
- (1) violates the Canons of Judicial Ethics which apply to Nez Perce tribal judges under this code;
 - (2) has a personal or financial interest or is a close relation to a party.

(b) Any person whose name appears on the roster maintained in the clerk's office may ask at any time to have his name removed or, if selected to serve, decline to serve, but remain on the roster.

(c) Complaints regarding mediators shall be made to the chief judge in writing and shall be treated as any complaint against a judge of the Nez Perce Tribe.

§1-3-7 Hearings

(a) The mediator shall contact the parties to schedule an initial meeting within twenty (20) business days after the case is referred to mediation.

(b) At least ten (10) business days prior to the meeting, each party shall submit a detailed summary of his position together with copies of all documents including, bills, records, photographs and any other materials supporting the party's claim to the mediator and the opposing party by means of certified mail.

(c) Each individual party shall attend the meeting in person. Corporations, governmental bodies, or other entities shall be represented at the hearing by an officer or other person with complete settlement authority. Attorneys shall be barred from participating in any mediation proceedings except to assist their clients in filing complaints against mediators or petitions for protective orders.

(d) The parties may upon obtaining the advance consent of the mediator, bring with them such other persons, not including their attorney, as will tend to further the resolution of the issues of the case.

(e) The conduct of the meeting shall be within the discretion of the mediator. The mediator shall define and describe the process of the mediation, confidentiality, the duties and requirements of the mediator and the parties, the fact that any agreement reached will be reached by mutual consent of the parties, and the ability of the parties to seek advice of counsel. The mediator shall objectively listen to the positions of the parties and assist the parties in reaching a settlement of all or some of the issues of the case.

(f) Mediator meetings may be held at the Tribal Court or other room in a tribally owned building made available to the mediator by the clerk's office. When no such room is available, the meeting shall be held at any other suitable location selected by the mediator. In making the selection, the mediator shall consider the convenience of the parties.

(g) (omitted in original by error)

(h) The mediator shall be authorized to establish reasonable rules and issue orders necessary to make the meeting productive and may with the agreement of the parties, hold additional meetings to attempt resolution of the issues.

§1-3-8 Petition to Terminate Mediation

Any party in a mediation proceeding may petition the Court in writing for an order to terminate the mediation process. Upon receipt of the petition, the Court shall grant the request and issue an order lifting the stay of proceedings in the litigation.

§1-3-9 Judgments

(a) If an agreement is reached during the mediation, the mediator shall file a report with the clerk's office not more than five (5) business days following the date of the agreement. The clerk shall serve copies of the report filed on the parties.

(b) The mediators report shall be in writing, signed by the mediator and shall include:

- (1) the names and addresses of each party;
- (2) a statement that the parties have agreed to a particular resolution to a disputed issue, if such is the case;
- (3) a statement that all parties agreed that the mediator would decide on a disputed issue, if such is the case;
- (4) a general description of the dispute;
- (5) the final resolution of any disputed issues.

(c) A copy of any agreement between the parties shall be signed by the parties and appended to the mediator's report.

(d) Promptly upon the filing of the mediator's report and the parties' agreement with the clerk, the Court shall review the documents and enter judgment thereon if the Court finds the agreement to be consistent with the laws of the Nez Perce Tribe and is satisfied that the parties entered into the agreement knowingly and freely. The judgment shall have the same force and effect as any judgment of the Tribal Court in a civil action.

CHAPTER 1-4
AMENDMENT OF CODE
(chapter amendments adopted effective 9/14/99)

§1-4-1 Definitions

- (a) "BIA-NIA" means the North Idaho Agency of the Bureau of Indian Affairs.
- (b) "OLC" means the Office of Legal Counsel of the Nez Perce Tribal Executive Committee.
- (c) "Subcommittee" means the Law and Order Subcommittee of the Nez Perce Tribe.

§1-4-2 Amendment Process

- (a) A proposed amendment to the Nez Perce Tribal Code shall be in writing and presented to the OLC. Any proposed amendment shall include:
 - (1) the reason for the proposed amendment;
 - (2) the specific action the proponent wishes the Nez Perce Tribal Executive Committee (NPTEC) to take on the amendment; and
 - (3) the code sections which would be amended (each numbered) or a statement that the amendment would create new sections.
- (b) Upon receipt of the amendment, the OLC shall research the code and other applicable laws to determine if conflicting provisions exist. Upon completion of this review, the OLC shall submit the amendment to the subcommittee along with OLC comments including the identification of any conflicting code provisions or other laws and any appropriate legislative history.
- (c) Following receipt of the proposed amendment and comments from the OLC, the subcommittee shall determine whether the amendment is meritorious. If so, at least fifteen (15) business days prior to subcommittee action on the proposed amendment, it shall post in a conspicuous location in Lapwai, Kamiah, and Orofino:
 - (1) a statement of the purpose and effect of the intended action;
 - (2) the text of the proposal;
 - (3) those provisions of the code which would be repealed by the proposed amendment, if any;
 - (4) that written comments may be submitted over the next fifteen (15) business days to the chairman of the subcommittee; and
 - (5) that any comments submitted after the close of the fifteen (15) day comment period will not be considered in subcommittee or NPTEC action on the proposed amendment.
- (d) The subcommittee shall determine whether to hold a public hearing on the amendment. Such determination may be based upon the potential controversy related to the

proposal or whenever the subcommittee otherwise determines that additional public input would be useful and constructive. If a hearing is to be held, the subcommittee shall post in a conspicuous location in Lapwai, Kamiah and Orofino:

- (1) a statement of the purpose and effect of the intended action;
- (2) the text of the proposal;
- (3) those provisions of the code which would be repealed by the proposed amendment, if any;
- (4) that on a specified date not sooner than fifteen (15) business days from the time of posting, a hearing will take place at a specified location for the purpose of taking public comment; and
- (5) that the comment period on the proposed amendment will be extended until the end of the hearing.

(e) The public comment provisions of this chapter shall not apply when the subcommittee determines that a proposed amendment is an interpretive rule, general statement of policy, or rule which addresses the internal management of the Nez Perce Tribe so long as such a rule does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

- (1) No resolution is necessary to enact an amendment if the amendment is made to correct a non-substantive clerical or typographical error. **(NPTEC authorized addition of section July 9, 2002).**

(f) After the end of the comment period, if any, the subcommittee shall work with the OLC to produce an acceptable draft of the amendment by incorporating any comments determined to be meritorious by the subcommittee and any subcommittee directives and converting the proposed amendment into the appropriate code and resolution format.

(g) Once an acceptable draft is produced, the subcommittee shall present it to NPTEC along with a summary of written public comments, the public hearing record, if any, and its own recommendations and/or comments related to the proposed amendment.

(h) Following presentation of the amendment to NPTEC, it shall approve, reject or re-submit the amendment to the subcommittee with further instructions. NPTEC shall make the final determination of any matter related to the amendment including whether public comment must be provided or whether to hold a public hearing.

(i) Following approval of an amendment by NPTEC, NPTEC staff shall present it to the office of the superintendent of the BIA-NIA for review as provided in the Constitution and By-Laws of the Nez Perce Tribe Art. VIII, Section 3.

(j) Following the enactment of an amendment, NPTEC staff shall:

- (1) index it by both recording the resolution number and placing a copy of the resolution in the annual indexes;

- (2) post in a conspicuous location in Lapwai, Kamiah and Orofino a copy of the final amendment. The amendment shall also be listed in the NPTEC minutes mailed to tribal members.

(k) Within twenty (20) business days following receipt of the adopted amendment from NPTEC staff, the OLC shall submit pre-codification notices to a pre-determined list of individuals who have copies of the code and have requested updates. Actual codification shall be conducted annually, according to a schedule determined by the subcommittee.

§1-4-3 Emergencies

(a) The regular amendment process shall not apply when NPTEC determines that prompt action is necessary for the preservation of life, health, property, order or natural resources. Emergency amendments may only be proposed by NPTEC, the NPTEC chairman or the subcommittee and shall be submitted to the OLC.

(b) The OLC shall research the code and other applicable law to determine if conflicting provisions exist. Following OLC review, it shall present the amendment to the subcommittee along with OLC comments, any conflicting code provisions, appropriate legislative history and the rationale for an emergency amendment. If necessary, the NPTEC chairman may direct that an emergency amendment be submitted directly to NPTEC without subcommittee review.

(c) Following presentation of the emergency amendment to the subcommittee, it shall work with the OLC to produce an acceptable draft of the amendment by incorporating any subcommittee directives and converting the proposed amendment into the appropriate code and resolution format.

(d) Once an acceptable draft is produced, the subcommittee shall present it to NPTEC along with any recommendations and/or comments related to the proposed amendment. Emergency amendments shall be reviewed by NPTEC following receipt of the amendment from the subcommittee. If necessary, the NPTEC chairman may call a special NPTEC meeting for this purpose. During such review, NPTEC shall adopt, reject or return the amendment to the subcommittee with further modifications and/or instructions.

(e) Following approval of an emergency amendment by NPTEC, NPTEC staff shall present it to the office of the superintendent of the BIA-NIA for review as provided in the Constitution and By-Laws of the Nez Perce Tribe Art. VIII, Section 3.

(f) Following enactment of an emergency amendment, NPTEC staff shall:

- (1) index the amendment by both recording the resolution number and placing a copy of the resolution in the annual indexes in a separate section designated and labeled specifically for emergency amendments;
- (2) post in a conspicuous location in Lapwai, Orofino and Kamiah a copy of the amendment. If possible, the amendment shall also be listed in the NPTEC minutes mailed to tribal members. Posting of emergency amendments shall clearly provide that such an amendment is an emergency, include the rationale for the emergency rule.

(g) An emergency amendment shall be effective immediately for a period of not longer than ninety (90) business days thereafter unless during that time it is enacted as a regular amendment pursuant to this chapter.

§1-4-4 Time Line/Coordination

The time period from the initial submission of a proposed amendment to the OLC to posting and indexing of an enacted amendment shall not exceed ninety (90) business days for regularly adopted amendments and shall not exceed forty (40) business days for emergency amendments. The chairman of the subcommittee shall ultimately be responsible for the oversight, enforcement and coordination of the procedures under this chapter.

§1-4-5 Elimination of BIA Review

In the event the Constitution and By-Laws of the Nez Perce Tribe are amended to eliminate BIA review and approval of amendments to the code, the provisions related to such review and approval in this chapter are hereby repealed and all amendments shall be enacted upon approval by NPTEC.

§1-4-6 Hearings

(a) All available members of the subcommittee shall attend hearings scheduled for the purpose of taking both oral and written public comment on proposed amendments.

(b) The chairman of the subcommittee shall preside over the proceedings. During the hearing the chairman shall:

- (1) call upon each individual in the order provided on the registration list to present his testimony;
- (2) limit each speaker to the amount of time that the chairman determines is appropriate and announced at the beginning of the proceedings;
- (3) direct questions presented to the speakers by members of the subcommittee and questions presented to members of the subcommittee or NPTEC staff by speakers;
- (4) designate appropriate staff to be present at the hearing to assist in answering questions from speakers.

(c) Written comments shall be presented to the chairman of the subcommittee following the hearing. Such comments shall be presented to NPTEC at the time of NPTEC review of the proposed amendment.

CHAPTER 1-5
LIMITATIONS ON ACTIONS

§1-5-1 **Limitations in General** (amended 8/24/99)

(a) Any action or prosecution under this code must be commenced within the periods prescribed in this chapter except when a different limitation is prescribed by tribal law.

(b) The period of limitation shall not run during any period in which a party is not physically on the Nez Perce Reservation, is in the custody of another sovereign, or in any way knowingly avoids service.

§1-5-2 **Criminal Offenses** (amended 8/24/99)

(a) A complaint shall be filed within five (5) years following the commission of a criminal offense.

(b) The period of limitations shall commence upon the commission of the offense, except that the period of limitations will commence on the date that the Tribe knows or should reasonably know of the offenses commission for:

- (1) offenses involving deceit, fraud, breach of trust;
- (2) where the defendant has acted to conceal the offense; or
- (3) where the offense is of the nature that its commission is unlikely to be discovered upon commission.

(c) The period of limitation shall not run during any period in which the defendant is not physically on the Nez Perce Reservation, is in the custody of another sovereign, or in any way knowingly avoids service.

§1-5-3 **Contracts**

An action upon any contract, obligation or liability founded upon an instrument in writing shall be commenced within five (5) years. An action upon a contract obligation or liability not founded upon an instrument of writing shall be commenced within four (4) years.

§1-5-4 **Statutory Liabilities, Trespass, Trover, Replevin, and Fraud**

(a) The following actions shall be commenced within (3) years:

- (1) an action upon a liability created by this code, other than a penalty or forfeiture. The cause of action in favor of the Nez Perce Tribe or any political subdivision thereof, upon a surety bond or undertaking provided for or required by this code shall not be deemed to have accrued against any surety on such bond or undertaking until the discovery by the tribe or any political subdivision thereof of the facts constituting the liability;
- (2) an action for trespass upon real property;
- (3) an action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property;

- (4) an action for relief on the ground of fraud or mistake. The cause of action in such case shall not be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

§1-5-5 Actions Against Officers, for Penalties, on Bonds, and for Professional Malpractice or for Personal Injuries

- (a) The following actions shall be commenced within two (2) years:
 - (1) an action against a tribal police officer, upon the liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution;
 - (2) an action provided by this code in relation to a criminal action for a forfeiture or penalty;
 - (3) an action to recover damages for professional malpractice, or for an injury to the person, or for the death of one caused by the wrongful act or neglect of another, including any such action arising from breach of an implied warranty or implied covenant. When the action is for damages arising out of the placement and inadvertent, accidental or unintentional leaving of any foreign object in the body of any person by reason of the professional malpractice of any hospital, physician or other person or institution practicing any of the healing arts or when the fact of damage has, for the purpose of escaping responsibility therefor, been fraudulently and knowingly concealed from the injured party by an alleged wrongdoer standing at the time of the wrongful act, neglect or breach in a professional or commercial relationship with the injured party, the action shall be deemed to accrue when the injured party knows or in the exercise of reasonable care should have been put on inquiry regarding the condition or matter complained of. In such a case, the action must be commenced within one (1) year following the date of accrual or two (2) years following the occurrence, act or omission complained of, whichever is later. In all other actions, whether arising from professional malpractice or otherwise, the cause of action shall be deemed to have accrued as of the time of the occurrence, act or omission complained of, and the limitation period shall not be extended by reason of any continuing consequences or damages resulting therefrom or any continuing professional or commercial relationship between the injured party and the alleged wrongdoer;
 - (4) an action for defamation, assault, battery or false imprisonment.

§1-5-6 Limitations Apply to Tribe

The limitations prescribed in this chapter apply to actions brought in the name of the Tribe, or for the benefit of the Tribe, in the same manner as to actions by private parties.

§1-5-7 Actions for Other Relief

An action for relief not otherwise provided for in this chapter must be commenced within four (4) years after the cause of action shall have accrued.

§1-5-8 Action, when Commenced

An action is commenced within the meaning of this chapter when the complaint is filed.

§1-5-9 Persons under Disabilities

(a) If a person entitled to bring an action, other than for the recovery of real property, be, at the time the cause of action accrued, either:

- (1) under the age of majority;
- (2) insane; or
- (3) imprisoned on a criminal charge or under the sentence of a criminal court for a term less than for life; the time of such disability is not a part of the time limited for the commencement of the action, provided however, that the time limited for the commencement of an action shall not be tolled for a period of more than six (6) years on account of minority, incompetency, any legal disability or for other cause or reason except as specifically provided in this section.

(b) If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, be at the time such title first descends or accrues, either:

- (1) under the age of majority;
- (2) insane; or
- (3) imprisoned on a criminal charge, or in execution, upon conviction of a criminal offense, for a term less than for life; then the term during which such disability continues is not deemed any portion of the time limitation for the commencement of such action or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five (5) years after such disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced or entry or defense made after that period.

(c) No person can avail himself of a disability unless it existed when his right of action accrued. When two (2) or more disabilities coexist at the time the right of action accrues, the limitation does not attach until they are removed.

§1-5-10 Aliens in Time of War

When a person is an alien subject, or citizen of a country at war with the United States, the time of the continuance of war is not part of the period limited for the commencement of the action.

§1-5-11 Reversal Judgment - New Action

If an action is commenced within the time prescribed therefor and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he dies and the cause of action survive, his representatives, may commence a new action within one (1) year after the reversal.

§1-5-12 Action Stay by Injunction or Code

When the commencement of an action is stayed by injunction or prohibition under this code the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

§1-5-13 Actions against directors and stockholders

This chapter does not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law; but such actions must be brought within three (3) years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

CHAPTER 1-6
NEZ PERCE TRIBAL CIVIL RIGHTS ACT
(chapter added 10/24/00)

§1-6-1 Title

This chapter shall be known as the Civil Rights Act of the Nez Perce Tribe.

§1-6-2 Civil Rights of Persons Within Tribal Jurisdiction

The Nez Perce Tribe in exercise of its sovereign powers of self-government shall not:

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the tribal council for a redress of grievances.

(b) Take private property for public use without just compensation.

(c) Make or enforce any law which divests title of a tribal member or his heirs or assigns to an allotment of tribal land.

(d) Deny any person within its jurisdiction the equal protection of the law or to deprive any person within its jurisdiction of liberty or property without the due process of the law.

(e) Subject any person for the same tribal offense to be twice put in jeopardy.

(f) Compel any person in any criminal case to be witness against himself.

(g) Deny any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense, to have assistance of counsel and to have these rights explained to him at the time of arrest. If the defendant can show to the satisfaction of the court that he cannot afford counsel, counsel may be provided at tribal expense if funds for this purpose are available in the tribal judicial budget.

(h) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments.

(i) Pass any bill of attainder or ex post facto law.

(j) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

(k) Full Disclosure.

The members of the Nez Perce Tribe are guaranteed full disclosure of information concerning criminal and civil proceedings in which they are a party, pursuant to §1-1-6 of Chapter 1-1, Administration of Tribal Court of the Nez Perce Tribal Code.

CHAPTER 1-7
TRIBAL NOTICE
(Chapter adopted 10/9/01)

§1-7-1 Findings

(a) The Nez Perce Tribe has a compelling interest in protecting tribal sovereignty and jurisdiction and the validity of tribal laws; and

(b) Tribal sovereignty and jurisdiction or the validity of tribal law may be questioned in cases in the Tribal Court or the Nez Perce Tribal Court of Appeals in which the Nez Perce Tribe or any agency, officer, or employee thereof is not a party; and

(c) With adequate, timely, and uniform notice of cases in the Tribal Court or the Nez Perce Tribal Court of Appeals that question tribal sovereignty and jurisdiction or the validity of tribal law, the Nez Perce Tribe can effectively assess whether and how to participate in such cases.

§1-7-2 Purpose

The purpose of this Chapter is to provide the Nez Perce Tribe with adequate, timely, and uniform notice of any and all cases in the Tribal Court or the Nez Perce Tribal Court of Appeals that question tribal sovereignty and jurisdiction or the validity of any tribal law and in which the Nez Perce Tribe or any agency, officer, or employee thereof is not a party.

§1-7-3 Notice Required

(a) Upon the filing of any action or proceeding in which the Nez Perce Tribe or any agency, officer or employee thereof is not a party, the Tribal Court or the Nez Perce Tribal Court of Appeals will promptly inform all parties in writing of the requirements of this Chapter. Any party to such a proceeding that questions tribal sovereignty or jurisdiction, or the validity of any tribal law will give notice thereof to Chairman of the Nez Perce Tribal Executive Committee and the Office of Legal Counsel. Such notice will identify the action or proceeding and will include a brief written explanation of the grounds upon which tribal sovereignty or jurisdiction or the validity of tribal law is being questioned. Any party giving notice under this Chapter will simultaneously file proof with the Tribal Court or the Nez Perce Tribal Court of Appeals that notice has been given as required by this Chapter.

(b) If notice is required under this Chapter, upon the Nez Perce Tribe's timely written request, the Tribal Court or the Nez Perce Tribal Court of Appeals or any party will timely serve copies of all subsequent filings and orders in the case on the Chairman of the Nez Perce Tribal Executive Committee and the Office of Legal Counsel.

§1-7-4 Manner and Timing of Notice

(a) Notice required under this Chapter will be given in writing and simultaneously with the raising of a question about tribal sovereignty or jurisdiction or the validity of any tribal law.

(b) Notice required under this Chapter will be made by certified mail.

§1-7-5 Tribal Participation Following Notice

(a) Upon timely motion or application, the Nez Perce Tribe may intervene as a matter of right in any action or proceeding in the Tribal Court or the Nez Perce Tribal Court of Appeals that questions tribal sovereignty or jurisdiction or the validity of any tribal law. Upon intervening under this Chapter, the Nez Perce Tribe may assert any and all available claims and defenses and may present any and all admissible evidence relating to the question of its sovereignty or jurisdiction or the validity of any tribal law, and is entitled to the same relief, as if the Nez Perce Tribe had instituted a separate action or proceeding; provided that, the Tribe will not be required to pay costs of litigation in any action or proceeding in which it has intervened under this Chapter. Intervention under this Chapter does not abridge, limit, or otherwise affect the right of the Nez Perce Tribe to commence, maintain, defend, or otherwise intervene in actions or proceedings in the Tribal Court or the Nez Perce Tribal Court of Appeals.

(b) Upon timely motion or application, the Nez Perce Tribe may appear as *amicus curiae* (friend of the court) in any action or proceeding that questions tribal sovereignty or jurisdiction or the validity of any tribal law.

(c) The Nez Perce Tribe may timely determine that it is in the best interest of the Tribe not to intervene, appear as *amicus curiae*, or otherwise participate in an action or proceeding in the Tribal Court or the Nez Perce Tribal Court of Appeals that questions tribal sovereignty or jurisdiction or the validity of any tribal law.

§1-7-6 Information Sharing and Consultation

In any action or proceeding in the Tribal Court or the Nez Perce Tribal Court of Appeals that questions tribal sovereignty or jurisdiction or the validity of any tribal law in which the Nez Perce Tribe does not intervene or appear as *amicus curiae*, the Nez Perce Tribe may nevertheless share important knowledge with any party involved in the action or proceeding. This could include assistance in responding to formal discovery requests or acting as an informal consultant.

§1-7-7 Timeliness of Participation Determinations

Unless the Tribal Court or the Nez Perce Tribal Court of Appeals orders otherwise, where timely and proper notice has been given under this Chapter, the Nez Perce Tribe will notify the Tribal Court or the Nez Perce Tribal Court of Appeals and parties in writing within sixty (60) days of receipt by the Tribe of such notice of any determination to participate in any action or proceeding by way of intervention or appearance as *amicus curiae*.

§1-7-8 Failure to Give Notice Not Jurisdictional or Waiver of Rights

The failure of the Tribal Court or the Nez Perce Tribal Court of Appeals or any party to give notice as required by this Chapter does not deprive the Tribal Court or the Nez Perce Tribal Court of Appeals of jurisdiction and is not a waiver or modification of any rights otherwise timely asserted by any party. Any notice given under this Chapter is not a substitute for, or a waiver or a modification of, any other requirement under this Code.

§1-7-9 Late Notice

If the Tribal Court or the Nez Perce Tribal Court of Appeals or any party discovers that notice to the Nez Perce Tribe under this Chapter should have been but has not been given, the Tribal Court or the Nez Perce Tribal Court of Appeals or party will promptly give notice in writing to the Tribe as required by this Chapter. The Tribal Court or the Nez Perce Tribal Court

of Appeals may stay the action or proceeding at any stage to allow compliance with this Chapter. If final judgment has already been entered, the Tribe may motion or apply for rehearing as of right, the Tribal Court or the Nez Perce Tribal Court of Appeals will entertain promptly any such motions or applications for rehearing by the Tribe, and in disposing of such motions the Tribal Court or the Nez Perce Tribal Court of Appeals, for good cause shown, may vacate a judgment or any portion thereof.

§1-7-10 Civil Sanctions

The Tribal Court or the Nez Perce Tribal Court of Appeals may impose civil sanctions on any party for willful or unreasonable failure to give notice as required by this Chapter and may use other reasonable means to cure any significant harm caused by failure to give notice as required by this Chapter.

§1-7-11 Jurisdiction

Nothing in this Chapter shall be deemed or construed to deprive, limit, or extend the jurisdiction of the Tribal Court or the Nez Perce Tribal Court of Appeals.

§1-7-12 Sovereign Immunity

Notice required under this Chapter does not authorize any party to name the Nez Perce Tribe or any agencies, officers, or employees thereof as a party to any action or proceeding. Nothing in this Chapter shall be deemed or construed as a waiver or limitation of the sovereign immunity from suit of the Nez Perce Tribe, its agencies, officers, or employees.

CHAPTER 1-8
PEACEMAKER COURT
(Chapter adopted by NPTEC 06/25/19)

§1-8-1 Establishment of Peacemaker Court

- (a) There is hereby established a Nez Perce Tribal Peacemaker Court, which shall be a division of the Nez Perce Tribal Court, and which shall operate in accordance with the provisions of this Chapter.
- (b) The purpose of the Peacemaker Court is to provide a voluntary forum for the practice of traditional, non-adversarial Nez Perce methods of dispute and conflict resolution, as an alternative to the Nez Perce Tribal Court, other Nez Perce specialty courts, and court-imposed sanctions. The Peacemaker Court will not determine or ascribe fault. Rather, the Peacemaker Court will use dialogue to develop consensus-based solutions to disputes and conflicts within the tribal community, in a manner that protects the health and welfare of the participating individuals and the broader community.

§1-8-2 Definitions

- (a) Adult: An individual who is 18 years of age or older; or who is 16 years of age or older and has been married or is otherwise emancipated.
- (b) Child: any person under the age of 18 not otherwise emancipated.
- (c) Delinquent act: An act which would be a crime if committed by an adult.
- (d) Immediate family: Includes mother, father, son, daughter, husband, wife, brother and sister both biologic and in-laws. Also includes biologic grandparents and grandchildren as well as any other relative living in the same household.
- (e) Juvenile Delinquent: a child who commits a delinquent act.
- (f) Participants: Participants are people who have consented to use the Peacemaking Court to attempt to resolve their dispute or conflict.
- (g) Peacemaker: a person appointed by the Tribal Court who meets the qualifications of Peacemaker as described below.
- (h) Peacemaker Code Revision Workgroup: a group that assists in the development of the Nez Perce Tribal Peacemaker Code.
- (i) Peacemaker Court: A panel of three (3) Peacemakers chosen to preside over disputes referred to the Peacemakers for resolution.
- (j) Peacemaker Court Handbook: The Peacemaker Court Handbook contains the guidelines and processes by which the Peacemaker Court will abide.

- (k) Peacemaker Selection Committee: a committee as set out at 1-8-4(a) which is assembled to select and appoint Peacemakers.
- (l) Peacemaking: Peacemaking describes the process employed by the Peacemaker Court and is fully described in the Peacemaker Court Handbook. Peacemaking encourages people to develop solutions to their problems by communicating with a supportive community in a safe environment.
- (m) Specialty Courts: Specialty courts include the Nez Perce Tribal Healing to Wellness Court, any other court housed within the Nez Perce Tribal Court system, or any attendance court in any school on the Nez Perce Reservation.
- (n) Serious Crime: includes, but is not limited to, those crimes enumerated in the Nez Perce Tribal Code, §4-1-35 through §4-1-92, and §4-1-114 through §4-1-158, or a similar crime in another jurisdiction.
- (o) Traditional family member: a person who culturally takes the place of any immediate family member or who is considered a family member under Tribal law or custom.

§1-8-3 Qualifications of Peacemakers

- (a) To be eligible to be a Peacemaker, a person must:
 - (1) Be at least twenty-one (21) years of age or older;
 - (2) Be knowledgeable and respectful of Nez Perce history, culture, and traditions;
 - (A) Preference will be given to Nez Perce Tribal members and to those applicants with knowledge of the Nez Perce language;
 - (3) Have the respect of the Tribal community, have a reputation for honesty, integrity, humanity, and have a demonstrated ability to resolve local problems by means that honor Nez Perce Tribal values of healing, reconciliation, and accountability;
 - (4) Must maintain a position of trust and responsibility in order for Peacemaker decisions to be accepted and honored by others;
 - (5) Submit to and pass a criminal background check; and
 - (6) To pass a criminal background check, a person cannot have been convicted in any court of competent jurisdiction of any of the criminal offenses listed below within ten (10) years of applying to be a Peacemaker. The criminal offenses include:
 - (A) child or elder abuse or neglect;
 - (B) domestic violence or dating violence;

- (C) stalking;
- (D) harassment;
- (E) intimidation;
- (F) any crime resulting in serious bodily harm to another person;
- (G) rape;
- (H) sexual assault;
- (I) sexual abuse of a child or elder; or
- (J) any other criminal conviction determined by the Peacemaker Selection Committee to be disqualifying.

§1-8-4 Selection and Appointment of Peacemaker Section Committee and of Peacemakers

- (a) An initial panel of Peacemakers will be selected by a panel of at least five (5) individuals, two of whom shall have served on the Peacemaker Code Revision Workgroup and three (3) of whom shall be from any of the following positions within the Nez Perce Tribe:
 - (1) The Chief Judge or Interim Chief Judge of the Nez Perce Tribal Court;
 - (2) An Appellate Judge of the Nez Perce Tribal Court;
 - (3) The HTWC Coordinator;
 - (4) The Nez Perce Tribal Police Chief;
 - (5) The Nez Perce Tribal Public Defender or Deputy Public Defender;
 - (6) The Nez Perce Tribal Prosecutor or Deputy Prosecutor; or
 - (7) A Nez Perce Tribal Probation Officer.
- (b) A tribal elder on the Peacemaker Selection Committee shall be automatically and immediately recused from the Peacemaker Selection Committee if they apply to be a Peacemaker or are subject to the jurisdiction of the Peacemaker Court.
- (c) The Peacemaker Court will be staffed by the Law and Order Executive Assistant who will function as the Court Administrator.
- (d) Appointment of Peacemakers.

- (1) Peacemakers shall be selected from any community within the boundaries of the Nez Perce Reservation. Preference will be for those applying from the Lapwai, Orofino and Kamiah, Idaho areas.
 - (2) When appointed to be a Peacemaker, a person shall sign an oath of office and abide by its ethical rules.
 - (3) When appointed to be a Peacemaker, a person shall sign a confidentiality agreement and abide by its terms.
 - (4) Peacemakers are volunteers and shall not receive compensation for their services, unless programs using Peacemaker Services, have funding to pay a limited stipend to be determined by the Chief Judge.
- (e) Removal of a Peacemaker
- (1) A Peacemaker shall serve until the Peacemaker is unable or unwilling to provide their service as a Peacemaker or is removed pursuant to the terms of this Chapter.
 - (2) A Peacemaker may resign by submitting a written notification of such resignation to the Law and Order Executive Officer's assistant.
 - (3) Any Peacemaker convicted of any serious crime as defined in this Chapter in any jurisdiction will be immediately removed from his or her position.
 - (4) A proven violation of the oath of office may be deemed good cause for removal of a Peacemaker.
 - (5) A proven violation of the confidentiality agreement may be deemed good cause for removal of a Peacemaker.
 - (6) Any Peacemaker who engages in conduct or behavior that is not illegal, but which significantly undermines the person's ability to serve as a Peacemaker may be removed from his or her position by consensus of the other Peacemakers.
 - (7) Upon submission of a written complaint against a Peacemaker, supported by proof of the behavior listed in (4) – (6) above, a majority of the remaining Peacemakers will convene a Peacemaking session which comports with the requirements of due process (notice and opportunity to be heard) and provides the Peacemaker with the opportunity to address and resolve the behavior or conduct that is the subject of the session. If resolution of the matter is not achieved through this process to the satisfaction of the remaining Peacemakers, the Peacemakers may recommend, by written and signed consensus, that the person no longer serve as a Peacemaker and require the person's removal.

(8) A decision by the Peacemakers made in accordance with (7) is final and not subject to appeal.

(f) Voluntary Recusal of a Peacemaker

A Peacemaker must recuse him or herself from any proceedings in which the following conditions occur:

- (1) If the case transferred to Peacemakers Court involves a Peacemaker or their immediate family, as “immediate family” is described in the Nez Perce Tribe’s Human Resources Manual 4.3.1, or a Peacemaker’s “traditional family,” as that term is understood by the Peacemakers.
- (2) If a Peacemaker has a personal or financial interest in the outcome of the Peacemaker Court proceeding.
- (3) A Peacemaker shall immediately notify in writing all other Peacemakers as well as the Tribal Court Judge or specialty court judge or official who has transferred the matter to the Peacemaker Court of the conflict-of-interest described above and of their recusal from the proceedings.

§1-8-5 Role of Peacemakers

Although Peacemakers will be sworn officers of the Nez Perce Tribal Court and subject to the applicable provisions of the Nez Perce Tribal Code, their job is to assist in the development of solutions to conflicts that are not patterned on solutions, sanctions, or punishments found in state or federal courts but are more closely aligned with the conflict resolution processes and methods traditionally used in Nez Perce culture. Peacemakers shall help participants referred to Peacemakers Court to reconnect to the Nez Perce culture, history and traditions by suggesting participation in a variety of Nez Perce activities and practices. These may include but are not limited to participation in sweat lodge ceremonies, traditional drumming or dancing and instruction in the *Nimiipuu* language. Peacemakers shall be immune from suit for good faith actions and omissions made within the scope of their authority and in compliance with applicable laws.

(a) The role of a Peacemaker includes:

- (1) Mediating disputes among participants in the Peacemaker Court.
- (2) Using Nez Perce Tribal cultural and traditional methods of achieving healing, reconciliation, and appropriate accountability so long as the civil rights of participants, as defined under the Indian Civil Rights Act, are not violated.
- (3) Instructing or counseling individuals on traditional Nez Perce teachings and values relevant to the dispute of the parties in Peacemaker Court.

- (4) Using any reasonable means to obtain the peaceful, cooperative, and voluntary resolution of the dispute or conflict subject to the Peacemaker Court. No force, violence, or harassment may be used by any Peacemaker in this process.
- (5) Participating as a team member in specialty court proceedings to provide progress reports and recommendations to that court.

§1-8-6 Duties of Peacemakers

- (a) Peacemakers shall perform the following duties:
 - (1) Schedule Peacemaker Court proceedings at times and in places that are reasonably convenient to all persons involved in the proceedings, providing reasonable written notice of the time and place of the proceedings to all persons who should attend.
 - (2) Follow the guidelines and processes for Peacemaker Court established by the Peacemaker Court Handbook.
 - (3) Maintain an atmosphere in all proceedings which honors Nez Perce Tribal traditions and values and promotes healing, respect, accountability, and reconciliation.
 - (4) Use reasonable means to obtain the peaceful, cooperative, and voluntary resolution of a dispute or conflict subject to the jurisdiction of the Peacemaker Court. No force, violence, threats, or violation of the lawful rights of any participant will be permitted.
 - (5) Report to Tribal Police if:
 - (A) In the course of a Peacemaker Court proceeding, any participant discloses that she/he is the victim of neglect, physical or sexual abuse.
 - (B) In the course of a Peacemaker Court procedure, a participant makes a credible threat to do harm to him or herself or another.
 - (C) In the course of a Peacemaker Court procedure, a participant confesses to causing serious physical injury to another person, or causing the death of another person, and this conduct previously has not been charged by a prosecutor in a court of competent jurisdiction.
- (b) Peacemakers shall provide regular status reports to the Tribal Court or specialty court with regard to the matter referred. Peacemakers shall also provide a semi-annual report to the Nez Perce Tribal Court Chief Judge indicating the number of matters heard by the Peacemaker Court in the past six months, describing the types of matters heard, the resolutions reached as a result of Peacemaker Court proceedings, and the number of transferred cases which were returned to the Tribal Court, or other specialty court, without resolution.

§1-8-7 Peacemaker Handbook

Before Peacemakers may begin to address disputes in the Peacemaker Court, pursuant to the provisions in this Chapter, the Peacemakers must develop, and adopt by consensus, a written “Peacemaker Handbook” describing in detail the guidelines, processes and ethics of the Peacemaker Court. The Handbook processes must comply with all applicable federal and Tribal law. The Peacemaker Court must follow the guidelines and processes established in the Peacemaker Handbook.

§1-8-8 Matters Which May Be Heard by Peacemaker Court

- (a) The Peacemaker Court, upon order of a judge of the Nez Perce Tribal Court or other specialty court official, may hear the following cases:
 - (1) Any criminal matter or infraction charged against an adult defendant, which does not involve an allegation of serious bodily harm or threat of serious bodily harm, sexual assault, sexual abuse, domestic violence, dating violence, stalking, harassment, intimidation, theft, or damage to property valued at more than three thousand dollars (\$3,000.00).
 - (2) Any juvenile delinquency matter.
 - (3) Any civil matter or dispute, excluding contract disputes, when a judge of a Nez Perce Tribal Court determines it would be in the best interest of justice, public safety, and reconciliation to make such a transfer, and all parties agree to the transfer.
 - (4) Any matter from a specialty court judge or official referred to the Peacemaker Court.
- (b) In a criminal or juvenile delinquency matter, the prosecutor, defendant, and victim(s) must agree to the transfer to Peacemaker Court. Non-parties may not request or object to the transfer of a matter to or from the Peacemaker Court.
- (c) If at any time during Peacemaker proceedings, the victim(s), prosecutor, defense attorney or defendant determines that Peacemaker Court is unable to effectively resolve the conflict or dispute, any of these persons may request in writing to the Nez Perce Tribal Court that the case be transferred back to the Nez Perce Tribal Court and an order transferring the case must be issued by the Nez Perce Tribal Court.
- (d) If at any time during Peacemaker Court proceedings, the specialty court judge or official determines that Peacemaker Court is unable to effectively resolve the conflict or dispute, the specialty court judge or official may order that the case be transferred back to the specialty court.

§1-8-9 Powers of the Peacemaker Court

- (a) The Peacemaker Court does not have the power to compel third parties to appear and participate in its proceedings or to compel the attendance of the participants. This includes parent(s), and legal guardian(s) in juvenile matters.
- (b) The Peacemaker Court must abide by all applicable Tribal or federal law and cannot take any action that may jeopardize the health, safety, or welfare of any person in the Peacemaking Court or the community.
- (c) The Peacemaker Court must follow the process and guidelines established in the Peacemaker Handbook.
- (d) The Peacemaker Court may request the advice of the Tribal Prosecutor or defense counsel, or the Nez Perce Tribal Office of Legal Counsel, but no attorneys are permitted to participate as legal counsel for a participant in Peacemaker Court proceedings without the prior express consent of the Peacemakers.

§1-8-10 Resolutions

- (a) The Peacemaker Court may request that the matter be transferred back to the Tribal Court or other specialty court because it cannot be resolved. Under such circumstances, the Peacemakers shall submit a signed statement indicating the matter cannot be resolved and the reasons for the decision. Upon receipt of such statement from the Peacemakers, a Tribal Court judge or specialty court judge or official must issue an order transferring the matter back to their court.
- (b) The Peacemaker Court may issue a Peacemaking Resolution and submit the Resolution to the Tribal Court or authorized official of a specialty court when the parties participating in the Peacemaker Court have reached an agreement they wish to have confirmed and recorded by the Court. The Tribal Court may issue the Judgment/Order if:
 - (1) The Tribal Court or specialty court has jurisdiction over the parties and subject matter of the agreement;
 - (2) The Peacemaker Court provides reasonable evidence that all necessary persons and parties have agreed to be bound by the terms of the agreement;
 - (3) The proposed Judgment or Order contains the complete agreement of the parties such that a dispute regarding the agreement reached in Peacemaker Court is unlikely to arise;
 - (4) The proposed Judgment or Order would otherwise be proper and enforceable by the Tribal Court or specialty court.

- (c) The Judgment or Order may be enforced by the Tribal Court as any other judgment of the Tribal Court or specialty court may be enforced.
- (d) A violation of the order would be handled by the Tribal Court in the same manner as violations of other Tribal Court orders. A violation of specialty court order or determination would be handled in the same manner as violations of other specialty court orders or determinations.

§1-8-11 Peacemaker Court Services Requested by Parties Not Subject to the Jurisdiction of the Nez Perce Tribal Court or Other Specialty Court

The Peacemaker Court may be used to provide services for a matter that is not before the Tribal Court, or other specialty court, at the written request of all parties involved in the matter, and with the consensus approval of all Peacemakers who will hear the matter. This provision applies only to minor disputes such as nuisance, animal trespass or annoyance, non-violent disorderly conduct, non-violent breaches of the peace, drug abuse or alcohol overuse by adults. Agreements resulting from these Peacemaker Court sessions are not enforceable in Tribal Court or other specialty court. More serious matters may not be heard by the Peacemaker Court unless transferred from Tribal Court, or other specialty court, pursuant to the provisions outlined in this Chapter.