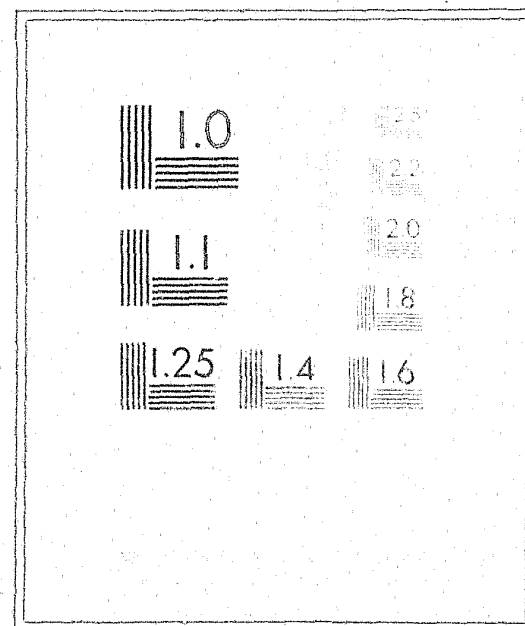


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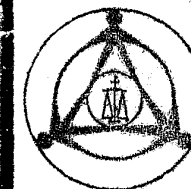
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THE DEVELOPMENT OF A TRIBAL CODE FOR THE
MISSISSIPPI BAND OF CHOCTAW INDIANS AND
COMMENTS REGARDING ITS IMPLEMENTATION



THE AMERICAN UNIVERSITY

Criminal Courts Technical Assistance Project
Institute for Studies in Justice and Social Behavior
The American University Law School
Washington, D.C.

39794

READING ROOM

THE DEVELOPMENT OF A TRIBAL CODE FOR THE
MISSISSIPPI BAND OF CHOCTAW INDIANS AND
COMMENTS REGARDING ITS IMPLEMENTATION

May 1975

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FOREWORD

The basic law governing criminal and civil conduct on the Choctaw reservation in Mississippi has been the U.S. Code of Federal Regulations. Since the CFR is not sufficiently flexible, comprehensive, or responsive to the needs of the Choctaw people, the Choctaw Tribal Council has been engaged for several years in the development of a new code which, when completed, will supercede the CFR on the reservation. It is also anticipated that many of the provisions in the proposed code will be similar to comparable provisions in the new Mississippi code.

By the Spring of 1974, the Council had reached the point where an attorney was needed to assume responsibility for compiling the existing drafts of the various sections of the code. Although limited funds had been made available to the Council by the United Southeastern Tribes, Inc., (USTED), a non-profit corporation established to provide a broad range of assistance to its seven member tribes, the Council lacked sufficient resources to complete the code development. The Tribal chairman, Philip Martin, therefore, requested LEAA's Criminal Courts Technical Assistance Project at the American University to provide the services of an attorney, S. Bobo Dean, who could develop a consolidated draft, make appropriate revisions and put the code into final form. Mr. Dean had done considerable work for the tribe in the past and was familiar with the unique problems encountered in the field of Indian law. Because Mr. Dean had completed a preliminary draft code for the tribe in 1970, which has served as the basis for subsequent drafts of the code, the Council felt he was best

equipped to pull together all the work thus far completed into a single document for Tribal Council consideration.

In accepting this request, the Technical Assistance Project assigned, in addition to Mr. Dean, Dr. William Tennery, former Dean of American University's Washington College of Law and currently professor of comparative law, to review the draft code and revisions and to discuss their provisions with the Tribal Council during the Council's meetings.

During the course of Mr. Dean's work, Professor Tennery provided suggestions relating to the drafts over the phone prior to an October 1974 meeting of the Choctaw Council. Later, these suggestions were presented orally to the Financial and Governmental Affairs Committee meeting in Philadelphia, Mississippi on March 11 - 13, 1975. During that meeting, Professor Tennery was asked to review two additional titles relating to juveniles which had been prepared by a local attorney in Mississippi and a Civil Code prepared by Mr. Dean. These suggestions were delivered orally and incorporated, as deemed desirable and appropriate, by the five Indian Council members attending the meeting in Philadelphia and which will be reflected in the final versions of the Code.

This report summarizes the code revision effort completed by the Spring of 1975 which was conducted under the auspices of the Technical Assistance Project. The Report is presented in two parts. Part I, based on Mr. Dean's work, describes the methodology used in developing the Code and the current status of this effort as well as the steps which will be taken to complete a final version. Part II based on Professor Tennery's

efforts, presents a summary of the Council's mid-March meeting convened to consider the draft code, as well as suggestions for certain long-term considerations that bear upon the code development and implementation effort.

PART I. Development of a Law and Order Code for the Mississippi
Band of Choctaw Indians

A. BACKGROUND

The Mississippi Band of Choctaw Indians is composed of the descendants of Choctaw Indians who remained in Mississippi after a fraction of the Choctaw Nation signed the Treaty of Dancing Rabbit Creek with the United States in 1830 and the majority of the Choctaw people migrated to Oklahoma in accordance with that treaty. Most of the Choctaws who remained in Mississippi were landless and impoverished. Little was done for them either by the state or the federal government until 1918.

In that year, as a result of a congressional investigation and the advocacy of their cause by the Mississippi congressional delegation, Congress passed a law which re-established a federal relationship with the Choctaws by authorizing the establishment of educational, land acquisition and other federal programs for their benefit. Subsequently, a Federal Indian reservation was established by the Secretary of the Interior pursuant to statutory authority (see 25 U.S.C. § 476).

However, there was no federal law and order program on the Mississippi Choctaw Reservation until 1968 notwithstanding the fact that the reservation was "Indian Country" (See 18 U.S.C. § 1151) within which State law could not be applied to Indians without Federal consent. [See *Donnelly v. United States*, 228 U.S. 243 (1913)]. In that year a local Mississippi court held that State Law did not apply to the crime of

murder committed by one Indian against another Indian within the reservation. Subsequently, the Federal Government established a Bureau of Indian Affairs police force on the reservation and a court of Indian offenses pursuant to the provisions of 25 Code of Federal Regulations, Part II.

Meanwhile, the Mississippi Band of Choctaw Indians, with the approval of the Secretary of the Interior, amended its constitution to authorize the adoption of a tribal law and order code which could supplant the provisions of the Federal reservation. In addition, with the assistance of a grant from the Law Enforcement Assistance Administration, the Association on American Indian Affairs conducted a study of law enforcement conditions on the reservation and prepared a report which included a suggested draft law and order code. Subsequently, this draft was reviewed and revised by tribal and Bureau of Indian Affairs staffs.

B. CONDUCT OF THE STUDY

The present project has been designed to assist the Tribal Council in putting the law and order code into final form for approval so that it may become effective in accordance with the provisions of the Tribal Constitution and By-Laws. A consolidated draft of the Code was presented to the Council in October 1974 at which time several revisions were requested.

Prior to the October 1974 meeting, earlier drafts had been revised and new versions of Title I (governing the establishment of a tribal court), Title II (governing criminal procedure) and Title III (governing criminal offenses) were prepared. In the preparation of drafts, the following sources were utilized: (1) the 1970 AAIA draft, which was based on the AAIA survey of law enforcement needs, including interviews with tribal judges and officials and BIA personnel, a survey of Choctaw opinion, and American Law Institute model provisions; (2) model provisions being developed by the Indian Task Force at the Department of the Interior; (3) a revised draft prepared with assistance of the Choctaw Legal Services staff.

At the October meeting the new draft was thus reviewed in detail with the tribal chairman and the Committee on Financial and Governmental Affairs of the Tribal Council. Choctaw Legal Services staff, an attorney on the staff of the United Southeastern Tribes, and law and order personnel of the Bureau of Indian Affairs participated in this meeting and provided additional advice and recommendations. Following the October meeting

written comments on the new draft were received from the Committee on Financial and Governmental Affairs, the American Indian Law Center of the University of New Mexico, and the legal staff of the United Southeastern Tribes. Based upon these written comments and the oral comments and recommendations made at the October meeting, a further revision was prepared for submission to the Committee on Financial and Governmental Affairs in March 1975.

In addition, the new revision covers civil procedure, law enforcement services and corrections, extradition, gun control, domestic relations and probate procedure. A juvenile code has been prepared by a Mississippi attorney working in cooperation with the project and will be reviewed and incorporated into the final complete law and order code. These new revisions were presented to the Council in March 1975.

C. GENERAL COMMENTS REGARDING THE CODE REVISION

It is quite clear that the issues relating to law and order on the Choctaw reservation cannot be separated from the social, cultural and historical context of the reservation. These factors, as well as the apparent wishes of the Tribe, require that for the foreseeable future, law enforcement in the reservation should be a federal-tribal responsibility, not a responsibility of the state and its subdivisions. The bases for this conclusion are described in detail in the Association on American Indian Affairs report entitled "Law and Order Among the Mississippi Choctaws." This approach is also in clear accord with legal precedents and federal statutes so long as the Tribe has not approved the extension of State jurisdiction to the reservation in accordance with federal law (see 18 U.S.C. § § 1151, 1152).

The development of a new legal code for a people whose incorporation into non-Indian culture is not complete by attorneys or officials or others whose own cultural background is wholly non-Choctaw is a risky business. That is why the careful review of successive drafts of the Code by tribal representatives and the incorporation of tribal recommendations into the final version is so important. As the law and order code has gone through multiple drafts over a five-year period, it is clear that the Tribe is proceeding cautiously to implement its law enforcement authority. Meanwhile, it is functioning under the admittedly imperfect Code of Federal Regulations.

It goes without saying that the version of the law and order code which will emerge from the present process of revision will not be

perfect. It is recommended, however, that the Council proceed to adopt the next draft -- with any modifications it chooses -- in the near future. Then it will be possible for tribal judges and law and order personnel to work with the code and test its provisions in the light of experience. The Council should keep in mind that imperfections found in the code can readily be corrected by amendment. This process is, of course, normal in non-Indian governments. The perfection of the Code through trial and error will undoubtedly lead to the development of better answers to the many questions which this project has raised than can possibly be produced through theoretical discussion.

PART II. Meeting of the Choctaw Council Financial and Government Affairs Committee, March 11-13, 1975: Summary and Comments.

A. SUMMARY OF THE MEETING

The Committee, consisting of five Choctaw members of the Council, was chaired by Frank Steve who set as its primary objective the development of a satisfactory set of basic laws for the Tribe. In addition to the Council members, attendance included several individuals from the Choctaw Agency including the "Chief of Police" as well as seven lawyers which included the two technical assistance consultants, a representative from a Native American Rights group, a Vista volunteer, a staff member of the Indian Law Center of the University of New Mexico, a volunteer Mississippi lawyer interested in establishing a public interest law firm in the area, and Don Solom, representing United Southeast Tribes.

The revised drafts of the Code were presented and discussed. Of particular note to this consultant were the provisions in Title I for tribal criminal jurisdiction over non-Indians on the Reservation, the implications of the Code's definition of "reservation," and the relative severity of the penalties in Title III. A copy of this draft is appended to this report.

B. GENERAL COMMENTS

It was apparent from the discussion at this meeting that an intelligent and reasonably comprehensive set of laws has been formulated which can basically be the beginning of a truly self-administered set of rules for the Tribe. A conscious effort was made to avoid creating a localized "white man's" set of rules, although, whether this did, in fact, occur, will not be known until the code is implemented -- particularly in terms of whether the final code adequately reflects tribal customs and Indian aspirations. This reservation is prompted by the frequency with which the views of the non-Indian attendees often prevailed without apparent proper understanding and contribution to the process by the Indian members -- those who will have to live with any egregious errors which may be created by the process. Regardless of the wisdom of establishing a separate Code of Laws for the Choctaws of Mississippi, the Code and its administration must reflect the basic desires of the Tribe, subject only to the broad constraints of due process and fundamental rights conferred by the United States Constitution.

The Juvenile Code, for example, is of particular concern to this consultant since the current draft appears more a model for a juvenile court system designed for contemporary suburbia than for the family culture of the Choctaw. Despite the comprehensiveness with which the Code is developed, this observation bears heavily upon the actual feasibility of implementing the Code and creating a reasonably well

functioning system of justice, both criminal and civil, which can be staffed and administered by the Tribe itself. Hopefully, potential problems in this area will be resolved during the process in which the final Code is approved by the Bureau of Indian Affairs and the Secretary of the Interior, as required, before it can become operative. For the sake of developing a greater pride and a greater measure of self administration, once that process is completed the Tribe should attempt to create the structure and the system necessary for implementation and administration, no matter how inadequate may be the initial result.

Although specific comments relating to the actual process of implementation are beyond the scope of this assistance, several observations are in order which relate to possible difficulties which might be encountered when the Code of Laws and its administration by the Tribe become a reality.

C. SPECIFIC COMMENTS RELATING TO IMPLEMENTATION

1. Unlikelihood of Later Amendment

This consultant agrees with Mr. Dean's conclusion that, although the ultimate Code may be imperfect for its particular usage, the Tribe has within its own means the ability to amend it from time to time as their experience indicates. However, whether this will, in fact, occur is open to question. Based on this consultant's three years' experience in Africa and the conflict between modern codes and tribal customs which he witnessed, it is more likely that provisions of the Code will be ignored rather than amended.

2. Feasibility of Securing Necessary Staff

Concern is also raised with the feasibility of the administration of this Code in a relatively sophisticated way so that over a period of time the Choctaw Indians will come to regard it as truly their own laws and, more importantly, that the laws are just and hence should be observed.

The applicable parameters of the Tribe in terms of numbers, age distribution, education levels, as well as the fact that the Choctaw Reservation in Mississippi actually encompasses seven different geographic locations, some of which are as much as 75 miles apart, present potential problems in the Code's effective implementation. Regardless of how well delineated the Code may be, its effectiveness will be determined by the quality of its administration. In this regard, there is some question as to whether or not there is sufficient personnel within the Tribe

itself to staff the various positions envisioned for an efficient and equitable administration of this Code of Laws.

It should be noted, however, that the lack of Indians with formal, legal education is not necessarily a serious deterrent to finding able judges, and it may well be that there are a number of Tribal members who do have a basic judicial temperament and the capacity to administer the new Code in a most satisfactory manner. What may be a real problem, however, is the financial capability of the Tribe to support these necessary personnel. If the Tribe is in an insecure position financially, support funds will be needed from outside sources -- perhaps the Bureau of Indian Affairs -- and this funding arrangement will need to be clarified early. These funds must cover other costs in addition to those for personnel, among which include the training of potential judges and other court personnel.

3. Need for Implementation Planning

In considering the final draft of the Code for adoption, the Council should also take into consideration the possible difficulties in terms of geographic, financial and personnel planning and allocation problems that will be encountered along the way in addition to those general areas mentioned above. For example, during the discussion of the Title in the Code relating to juveniles (a relatively elaborate set of rules including some highly technical regulations to insure the protection of the rights of juveniles as well as others who might be summoned to appear before a judge sitting for these matters), this

consultant asked what would be the relative population of children who would be subject to the Code and it was indicated that approximately 1,000 youngsters were involved.

Further examination indicated that no more than probably 10 percent of those youngsters would encounter difficulties in terms of the laws relating to juveniles. Of this 10 percent, only a handful would likely be classified as in need of serious constraints or treatment. The result is that while the Code envisioned a relatively elaborate system with appropriate staffing, in fact there is little likelihood that there is a significant need for this overly sophisticated approach, and certainly there would be even more of a likelihood of a genuine underutilization of the personnel involved. This situation could be alleviated in part by having staffers assigned part-time to perform related and different assignments and who would operate in the juvenile area only as the need arose. However, such a personnel pattern requires detailed preliminary planning and projection.

4. Need to Indicate Inadequacies of Existing Code

Although the new Code is a reflection of the desire on the part of the Mississippi Band of Choctaw Indians to administer its own affairs, including the creation and operation of a system of justice, both civil and criminal, it should be noted in passing that the inadequacies of the current system as administered by the Bureau of Indian Affairs should have been spelled out in some detail in order to avoid creating a similar set of inadequacies although administered by the Indians themselves.

5. Need to Involve All Participants in the Code Review

During the course of this consultant's site visit, he met briefly with one of the current Indian judges who is administering the current laws under the aegis of the bureau. It appears unfortunate that he had not been invited to attend the meeting since he might have been an extremely useful participant in terms of supplying information regarding present practices and needs.

D. SUMMARY

At the conclusion of the final day of the meeting, the consultant was given the opportunity to visit the present detention center. It is a very modern structure, well equipped and, as such centers go, reasonably comfortable. He also entered into conversations with the three prisoners being detained at the center, two of them awaiting trial. While they represented a very small sample and a very unscientific approach, it should be noted, nevertheless, that they displayed no animosity toward the "system," the institution and/or the police personnel. Quite to the contrary, there seemed to be a friendly esprit de corps prevalent. Hopefully, this attitude and atmosphere does prevail and will continue, once the true administration of law and order has been transferred from the responsibility of the Bureau to the Tribe itself. In view of the relatively small size of the Tribe, the likelihood of this happening is good.

In sum, a relatively sound and comprehensive base has been created for the establishment of a self-administered system of justice. Hopefully, the present Council as well as all future Councils will consider it as merely a base which can be reformulated, amended, and up-dated as need and experience dictate. For the system to operate properly, reasonably trained persons must be available on a continuing basis for the foreseeable future. Initially, this will place the position of the outside legal advisor in a more critical stance so that the legal advisor must be chosen with a great deal of care in view of the undue reliance

that will be placed on the advisor's advice until qualified Indian judges and other court personnel become available and experienced. Preferably the person selected should be a legally educated Indian with some experience in the administration of justice on a Tribal reservation.

TITLE ICHOCTAW COURT

Section 1. Establishment. The judicial power of the Mississippi Band of Choctaw Indians (hereinafter "the Tribe") is vested in a Choctaw Court and a Choctaw Court of Appeals.

Section 2. Jurisdiction. The Choctaw Court shall have jurisdiction over any offense under this Code committed by any person within the Reservation and shall have civil jurisdiction over any civil proceeding in which the defendant is a member of the Tribe or an Indian of another tribe who resides or does business within the Reservation. As used in this Code, "Reservation" shall mean all lands in Mississippi held by the Tribe or held by the United States of America in trust for the Tribe or for any individual member of the Tribe.

Section 3. Notice of Jurisdiction. A notice including the statement: "Any person entering the Choctaw Reservation consents thereby to the criminal jurisdiction of the Choctaw Court," shall be prominently displayed within fifteen feet of each public road leading into the Reservation and shall be in capital lettering not less than one foot high.

Section 4. Composition of the Choctaw Court. The Choctaw Court shall consist of a Chief Judge, two Associate Judges, and a Special Judge.

Section 5. Composition of the Choctaw Court of Appeals.

The Choctaw Court of Appeals shall consist of the judges of the Choctaw Court exclusive of the judge from whose decision an appeal is taken and must include at least two judges.

Section 6. Appointment of Judges. Each judge shall be elected by the Tribal Council by two-thirds vote of its membership upon nomination by the Chief of the Tribe or any member of the Tribal Council. Vacancies in the Choctaw Court by reason of death, resignation or removal shall be filled in the manner provided for appointments. No member of the Tribal Council shall be entitled to vote on the election of a judge when a candidate in such election is a member of his immediate family.

Section 7. Terms of Judges. Each judge shall hold office for a term of four years except in case of death, resignation or removal for cause as hereinafter provided or of the abolition of the office.

Section 8. Qualifications of Judges.

Sec. 8.1. No person shall be eligible to be a Chief Judge or an Associate Judge unless he or she:

- (1) is at least 25 years of age;
- (2) has never been convicted of a felony;
- (3) has not been convicted of a misdemeanor during the past year;
- (4) is of good moral character and integrity;

(5) can read, write and understand the English language and can speak and understand the Choctaw language;

(6) is familiar with the provisions of this Code, Choctaw Court procedures, Federal law applicable to the Reservation and Choctaw customs, and is capable of preparing the papers and reports incidental to the office of judge; and

(7) is a member of the Tribe of one half or more degree Choctaw blood.

Sec. 8.2. No person shall be appointed as a Special Judge unless he or she has the qualifications listed above, except for the ability to speak and understand the Choctaw language, membership in the Tribe, and is an attorney who shall have graduated in good standing from an accredited law school and is duly admitted to the practice of law in the State of

Sec. 8.3. Mississippi./ No person shall be confirmed as a Chief Judge, Associate Judge, or Special Judge, until his or her qualifications and competence have been examined by the Financial and Governmental Affairs Committee of the Tribal Council and a written report of such examination has been filed with the Tribal Council.

Section 9. Judges' Oath. Prior to taking office, each judge shall take the following oath, which shall be administered

by the Chief: "I, _____, do solemnly swear [or affirm] that I will support the Constitution of the Tribe and administer justice and safeguard the rights guaranteed by the Indian Civil Rights Act of 1968."

Section 10. Removal of Judges. Any judge of the Choctaw Court may be removed from office by a two-thirds vote of the membership of the Tribal Council for neglect of duty or gross misconduct after a hearing upon five days' notice at which the judge is given an opportunity to answer all charges and present evidence in his defense.

Section 11. Assignment of Cases. The Chief Judge shall hear all cases, civil and criminal, arising under this Code, except those which he has assigned to an Associate Judge or a Special Judge.

Section 12. Disqualification of Judges. Any judge shall be disqualified to act in any proceeding:

(1) in which he or she has an interest;

(2) in which he or she is or has been a material witness; or

(3) in which he or she is related to any party or their attorney by marriage or blood in the first or second degree.

A judge may be disqualified on his own motion or by the filing of an affidavit of prejudice by any party in the proceeding.

n] Section 13. Compensation of Court Personnel. The compen-
er n of the judges and other personnel of the Choctaw Court
l be determined by the Tribal Council, provided that a judge's
nsation shall not be reduced during his term of office.

Section 14. Sessions; Rules of Court. Rules governing
ime and place of court sessions shall be as follows, unless
wise provided by order of the Chief Judge:

(1) Regular Sessions: Monday and Friday at one
(1) p.m. in the Choctaw Tribal Court, Pearl River
Community, unless one of such court days should fall on
a legal holiday, in which case court shall be held on
Tuesday or Thursday, as the case may be.

(2) Civil Cases Assigned to Special Judge: first
and third Friday of each month.

Chief Judge shall issue rules governing the conduct of pro-
lings in Choctaw Court not inconsistent with the provisions of this Code
forms for use in preparing complaints and other documents
orized in this Code.

Section 15. Docket. The Clerk shall keep a well-bound
, which shall be called the Docket, in which shall be
red the names of each plaintiff and defendant in any civil
riminal proceeding, the character of the proceedings, the
of issuance and the return date of any process issued
ein, the appearance or default of parties summoned, the

date and amount of any judgment, any appeal therein, and all other proceedings therein. Any party may obtain a certified copy of such proceedings from the Clerk upon payment of the costs thereof.

Section 16. Choctaw Prosecuting Attorney.

Sec. 16.1. The Tribal Prosecuting Attorney shall be appointed by the Chief and confirmed by the Tribal Council by two-thirds vote of the membership of the Tribal Council. No person shall be appointed as Prosecuting Attorney unless he or she:

(1) is 21 years of age or older;

(2) has never been convicted of a felony and has not been convicted of a misdemeanor during the past year;

(3) can read, write and understand the English language and can speak and understand the Choctaw language;

(4) is of good moral character and integrity; and

(5) is familiar with the provisions of this Code and Choctaw Court procedures applicable to the prosecution of criminal cases, Federal laws applicable to the Reservation and Choctaw customs, and is capable of performing the duties of the Prosecuting Attorney.

. 16.2. The Prosecuting Attorney is authorized to sign, present any complaint, subpoena, affidavit, motion or civil or criminal process on behalf of the Tribe.

. 16.3. The Prosecuting Attorney may be removed from office by a two-thirds vote of the membership of the Tribal Council.

Section 17. Clerk of the Court.

. 17.1. The Clerk of the Court shall be appointed by the Tribal Council, shall be confirmed by a majority vote of the membership of the Tribal Council and may be removed from office in accordance with the personnel policies of the Tribe. Vacancies shall be filled in the manner provided for appointments.

. 17.2. No person shall be appointed as Clerk of the Court unless he or she:

- (1) is at least eighteen (18) years of age;
- (2) has never been convicted of a felony and has not been convicted of a misdemeanor in the past year;
- (3) is of good moral character and integrity;
- (4) speaks, writes and understands the English language fluently and has demonstrated competence in the skills essential to the preparation and maintenance of court records, including typing, shorthand and bookkeeping; and
- (5) speaks and understands the Choctaw language fluently.

Sec. 17.3. Prior to entering upon the duties of Clerk, the Clerk shall be bonded in the amount of \$5,000, the cost thereof to be paid from the Tribal Court Fund established pursuant to Section 21.

Section 18. Duties of the Clerk. In addition to the duties specified in Section 15, the Clerk of the Court shall assist the Chief Judge in the administration of the Choctaw Court and shall prepare complaints, subpoenas, warrants and other documents incidental to the lawful function of the Court. The Clerk shall attend and keep a record of the Choctaw Court and the Choctaw Court of Appeals, read the complaints, administer oaths, collect all fines or other sums paid to or by order of the Court and account therefor to the Tribal Council.

Section 19. Other Court Personnel. As may be authorized by the Tribal Council, the Chief Judge may employ such additional court personnel as are necessary to perform the work of the Choctaw Court including, but not limited to, a bailiff and a court interpreter, the compensation and terms of employment thereof to be fixed by the Tribal Council, provided that such other Court personnel shall be supervised by and may be removed by the Chief Judge.

Section 20. Attorneys.

Sec. 20.1. Professional or lay attorneys shall be admitted to practice before the Choctaw Court upon motion by order of the

Chief Judge, who shall make examination of the competence and character of applicants for admission.

Sec. 20.2. No professional attorney shall be admitted to practice before the Choctaw Court unless he or she:

(1) is admitted to the practice of law in the State of Mississippi or another state or the District of Columbia;

(2) has never been convicted of a felony (without regard to the nature of the plea entered to the felony charge) and has not been convicted of a misdemeanor during the past year;

(3) is of good moral character; and

(4) demonstrates to the Court a thorough knowledge of this Code, Choctaw Court procedures, Federal laws and regulations applicable to the Tribe and Choctaw customs.

Sec. 20.3. No person not a professional attorney shall be admitted to practice before the Choctaw Court unless he or she is:

(1) twenty one (21) years of age or older;

(2) has never been convicted of a felony and has not been convicted of a misdemeanor in the past year;

(3) is of good moral character;

(4) demonstrates to the Court a thorough knowledge of this Code, Choctaw Court procedures, Federal laws and

regulations applicable to the Tribe and Choctaw customs;

(5) is a member of the Tribe or of another Federally-recognized American Indian tribe; and

(6) is not a member of the Tribal Council.

Sec. 20.4. Any professional or lay attorney shall take the following oath as a condition of admission to practice before the Choctaw Court:

"I, _____, do solemnly swear [or affirm] that I will support the Constitution of the Tribe and that I will faithfully discharge all duties incumbent on me as an attorney in the Choctaw Court to the best of my abilities and understanding."

Admission to practice before the Choctaw Court shall be evidenced by the issuance of a certificate to the attorney signed by the Chief Judge.

Sec. 20.5. Any attorney may be disbarred by order of the Choctaw Court for (1) conviction of a felony (without regard to the nature of the plea entered to the felony charge); (2) false swearing; (3) disbarment by any Federal or State court; (4) conduct unbecoming an officer of the Court or in contempt of court.

Sec. 20.6. A current roll of professional and lay attorneys admitted to practice before the Choctaw Court shall be maintained by the Clerk.

Section 21. Tribal Court Fund. All sums, other than court costs, collected as fines imposed by the Court, bail or bonds, sale of confiscated items or of commodities delivered in payment of fines and any other sums collected in connection with any function of the Choctaw Court shall be deposited by the Clerk in the name of the Tribe and shall not be used to finance the activities of the Court, except as provided in Section 17.3. Such funds may be appropriated by the Tribal Council for tribal purposes. Court costs shall be deposited by the Clerk in a special account and may be used to finance the activities of the Court.

Section 22. Contempt. Any judge of the Choctaw Court of Appeals may rule a person in contempt of court if he willfully and unjustifiably disrupts, obstructs or otherwise interferes with the due and orderly course of proceedings in the courtroom after being advised by the judge to cease. Rulings of, and sentences for, contempt shall be announced immediately after the acts of contempt occur. A person found in contempt of court may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed one hundred fifty dollars (\$150), or both.

TITLE II

CRIMINAL PROCEDURE

PART I - PRETRIAL PROCEDURE

Section 1. Complaints. Criminal proceedings in the Choctaw Court shall be commenced by filing a complaint which shall be signed and sworn to by the complaining witness and signed by a judge and shall state the following facts (if known):

(1) the name or description of the person alleged to have committed an offense (hereinafter the "defendant");

(2) a short statement of the acts constituting the offense in ordinary language, including the time, date and place of the acts and the section of Title III of this Code allegedly violated.

(3) the date of filing.

Section 2. Summons and Arrest Warrant. After a complaint has been filed and if the judge decides that it is reasonable to conclude that an offense has been committed and that the defendant may have committed it, the judge may issue a summons or an arrest warrant. A summons shall contain an order directing the defendant to appear in Court at a specific date and time. An arrest warrant shall direct a Police Officer to arrest the defendant and bring him before the Court. Each summons or arrest warrant shall be signed by the judge and shall state:

(1) the name of the defendant or, if the name is unknown, a description by which the defendant can be identified with reasonable certainty;

(2) the offense charged in the complaint;

(3) the date of issuance.

Upon service of an arrest warrant the Police Officer shall endorse and return it to the clerk. When the defendant cannot be found or served, an arrest warrant shall remain valid. No arrest warrant shall be issued more than two years following the date of the offense charged. If a summons is not obeyed, the judge shall issue a warrant for the arrest of the defendant.

Section 3. Arrest.

Sec. 3.1. Within the Reservation any Police Officer may take any person into custody for any offense under this Code or under Federal law committed in the presence of a commissioned Federal Police Officer who is on duty or when such a Police Officer has reasonable cause to believe that the person has committed such an offense or when a warrant has been issued hereunder for the arrest of the person. When any person is arrested, he shall:

(1) be informed by the Police Officer making the arrest of his right to remain silent, that any statements made by him may be used against him in Court, and of his right to the advice of legal counsel at his own expense;

(2) if arrested pursuant to a warrant, receive a copy of the warrant at the time of the arrest.

Sec. 3.2. Any Police Officer duly authorized to take a person into custody, who is refused admittance (after giving notice of his intentions) to a dwelling or other structure in which he has reasonable cause to believe that such person is located, may break open an outer or inner door or window thereof when necessary to effect the arrest.

Section 4. Bail.

Sec. 4.1. Any person charged with an offense under Title III of this Code shall be admitted to bail before conviction of the offense (or after conviction, if an appeal is pending) upon the following terms:

(1) acceptance by the Choctaw Court of a cash or surety bond in such amount as will, in the opinion of the judge, insure the appearance of the defendant, on the date set for trial, giving consideration to the nature and circumstances of the offense and the character, reputation and previous criminal record of the defendant, provided that such amount shall not exceed twice the maximum fine for each offense charged;

(2) release of the defendant before the Choctaw Court upon the defendant's written promise to appear as required by the Court; or

(3) release to the custody of a designated person or organization undertaking to assure the appearance of the defendant as required by the Court.

Sec. 4.2. Upon good cause shown, the Choctaw Court may increase or decrease the bail originally set. If the defendant fails to appear before the Choctaw Court as lawfully required, the Choctaw Court may direct an entry of such failure to be made in the record, order the forfeiture of the bond or cash deposit, and issue a warrant for the arrest of the defendant. Any cash or other property given as security by the surety or the defendant shall be returned by the Choctaw Court upon the entry of a not guilty verdict or the sentence of the Court.

Section 5. Search Warrants.

Sec. 5.1. A warrant for the search and seizure of property may be issued by any judge of the Choctaw Court, provided that no warrant shall be issued except:

- (1) upon probable cause that a search will discover
 - (a) stolen, embezzled or contraband property
 - (b) property which has been used or is being used to commit a criminal offense and
 - (c) property constituting evidence of a criminal offense;
- (2) when supported by oath or affirmation;
- (3) naming or describing the person, and particularly describing the items or articles to be seized, the place to be searched, and the reason or reasons for its issuance; and

(4) to a Police Officer.

Sec. 5.2. A search warrant shall be served only by a Police Officer between 7 A.M. and 7 P.M. unless the judge shall for good cause authorize service at another time and such authorization is noted on the warrant.

Sec. 5.3. No search shall be made more than ten days after the issuance of the search warrant. The Police Officer shall promptly deliver to the judge a complete list of the items or articles seized prepared in the presence of the person from whom such property was taken, or another witness, and signed by such person or witness, as well as by the Police Officer. The judge shall promptly endorse the list and deliver it to the person from whom the property was taken.

Sec. 5.4. No Police Officer or other person shall search or seize any property without a warrant unless:

(1) he has reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense; or

(2) the search is incidental to a lawful arrest to the protection of a Police Officer, or to seizing evidence of the commission of the offense for which the defendant is arrested. Sec. 5.5. Physical evidence which has been obtained in violation of this Section 5 shall not be admissible in any proceedings of the Choctaw Court or the Choctaw Court of Appeals.

Section 6. Preliminary Hearing.

Sec. 6.1. The defendant shall be presented before a judge of the Choctaw Court or released from custody without unnecessary delay and in no instance later than the next regularly scheduled court session.

Sec. 6.2. At the preliminary hearing:

(1) the complaint shall be read to the defendant;

(2) the judge shall explain the offense and the penalties prescribed by this Code to the defendant in ordinary English or (at the defendant's request) in Choctaw and shall determine that the defendant understands the nature of the charges and the possible penalties.

(3) the judge shall advise the defendant of his right to remain silent, to a trial by jury and (at his own expense) to legal counsel and that the preliminary hearing will be postponed if he desires to consult with counsel;

(4) the judge shall ask the defendant to plead:

(a) Not Guilty,

(b) Guilty, or

(c) Not Guilty by Reason of Insanity.

Sec. 6.3. If the defendant pleads Guilty, the judge shall accept the plea only after determining that the plea is made

voluntarily with understanding of the nature of the charge and the consequences of the plea. The judge shall not enter a judgment upon a plea of Guilty unless he is satisfied that there is a factual basis for the plea. If a plea of Guilty is accepted and judgment entered, the judge shall sentence the defendant immediately or within a reasonable period, giving the defendant an opportunity to inform the court of mitigating facts. If the defendant fails to plead or if the judge refuses to accept a plea of Guilty, the judge shall order the entry of a plea of Not Guilty. The Court may, in its discretion allow a defendant to withdraw a

plea of Guilty whenever it appears that the interest of justice and fairness would be served thereby. If the defendant enters any other plea, the judge shall set a date for trial not less than seven days nor more than thirty days from the date of the preliminary hearing. The defendant shall be eligible for release from custody in accordance with the provisions of Section 5. Unless so released, the judge shall order the detention of the defendant by signing a written order in the form prescribed by the Choctaw Court.

PART 2 - TRIAL PROCEDURE

Section 1. Right to Jury Trial. Cases shall be tried by the judge unless the defendant demands a jury trial. The demand may be made orally at the preliminary hearing or by written application to the judge within three days thereafter.

Section 2. Pre-Trial Motions. Any defendant shall be entitled to make the following pre-trial motions, which shall be ruled on when made unless the judge for good cause sets a later date for hearing:

- (1) A motion to set aside/^{the}complaint shall be granted:
- (a) when the complaint is not in compliance with this Code;
 - (b) when there is an absence of reasonable cause to believe the defendant is guilty of the offense charged; (c) when the Court lacks jurisdiction over the defendant or the offense charged, provided that no such motion, other than a motion

under clause (c), shall be granted if made after the defendant pleads;

(2) A motion for bill of particulars shall be granted when it appears that the defendant has a reasonable need for additional facts in order to prepare his defense;

(3) A motion to suppress evidence shall be granted when it appears that evidence has been illegally obtained.

(4) A motion for change of judge, supported by an affidavit of prejudice, shall be granted when it appears that the defendant cannot have an impartial trial by reason of the bias or prejudice of the judge.

Section 3. Formation of Juries.

Sec. 3.1. A jury shall consist of six persons. Any enrolled member of the Mississippi Band of Choctaw Indians, who is qualified to vote in elections of the Council (other than judges, clerks or professional attorneys and persons of unsound mind or who have been convicted of any offense under this Code during the past two years or of a felony or dishonorably discharged from the Armed Forces of the United States) shall be eligible for jury service.

Sec. 3.2. Once every six months in open court the Clerk shall draw the names of eighteen persons at random from a box containing the names of the persons registered to vote in elections held by the Mississippi Band of Choctaw Indians.

If an ineligible name is drawn, an additional name shall be drawn until eighteen names shall have been drawn. Such persons shall constitute the jury panel.

Sec. 3.3. When it is necessary to form a jury, at the direction of the Chief Judge, the Clerk shall draw names from a box containing the names of the persons on the jury panel until six names are drawn none of whom have served on a jury during the past year.

Sec. 3.4. Either party in a case may challenge not more than two jurors without cause and any number of jurors for cause. The judge, the prosecutor and the defendant shall be entitled to question each juror to determine the existence of cause. Cause may consist of, but shall not be limited to:

(1) non-eligibility as a juror or such physical or mental defect as to render the juror incapable of performing his duties;

(2) having been a juror, party or witness in any civil or criminal proceeding involving the same facts;

(3) such family or business relationship with the defendant or having such an opinion of the guilt or innocence of the defendant as would impair impartiality as a juror.

Sec. 3.5. The Clerk shall continue to draw jurors until a jury of six is made up. The juror's oath shall then be administered by the judge, as follows: "We, and each of us, do solemnly swear, or affirm, that we will truly and fairly

try this case between the Mississippi Band of Choctaw Indians and the defendant, so help us God."

Sec. 3.6. Each juror shall be entitled to a fee of \$10.00 for each day of jury service plus twelve cents per mile for travel to and from the Court.

Section 4. Order of Procedure.

Sec. 4.1. After the jury has been made up and sworn by the judge or immediately, if no jury trial is demanded:

- (1) the Clerk shall read the complaint and state the defendant's plea;
- (2) opening statements shall be made by the prosecutor and the defendant or his counsel;
- (3) the prosecutor shall present evidence in support of the charge, and the defendant or his counsel shall have the right to cross examine any witness called by the prosecutor;
- (4) the defendant or his counsel shall present the defense and evidence in support thereof, and the prosecutor shall have the right to cross examine any witness called by the defendant or his counsel;
- (5) the parties may then offer rebutting testimony only, except that the Court may in the interest of justice permit the introduction of new evidence;
- (6) the prosecutor and the defendant or his counsel may then argue the case, the prosecutor having the right to open and close;
- (7) in a jury trial the judge shall charge the jury orally or in writing, stating the law applicable to the case.

Sec. 4.2. In a jury trial, questions of law shall be decided by the judge and questions of fact shall be decided by the jury. At any time during the trial the judge may give the jury such instructions as to the law as he considers necessary. The parties may file requested instructions in writing at the close of the evidence or otherwise as the judge may direct, furnishing copies thereof to the other party. The judge shall inform the parties of his action on such requests prior to oral argument. Either party may object to instructions, and such objections shall be made outside the hearing of the jury. Objections not made before the jury retires to determine its verdict shall be waived.

Section 5. Rights of the Defendant. In all criminal prosecutions, the defendant shall have the following rights.

(1) the right to be present throughout the proceeding and to defend himself in person, provided the defendant conducts himself with proper decorum, or (at his own expense) by counsel;

(2) the right to know the nature and cause of the charge and to receive a copy of the complaint;

(3) the right to meet the witnesses against him face to face;

(4) the right to compulsory process to obtain the testimony of witnesses in his behalf and physical evidence;

(5) the right to a speedy public trial by an impartial jury;

(6) the right not to testify: the failure of the defendant to testify shall not be construed against him or commented upon by the prosecutor.

Section 6. Witnesses. The Choctaw Court shall have the power to issue summons to witnesses from within or without the Reservation. Witnesses shall be compensated at the rate of \$5.00 per day for each day of trial and ten cents per mile for travel to and from required attendance at Court.

Section 7. Miscellaneous Provisions.

Sec. 7.1. Two or more defendants charged with the same offense may be tried jointly.

Sec. 7.2. The judge may order the jury to view the premises where the offense or other material facts occurred.

Sec. 7.3. The judge may order the discharge of a juror who becomes sick or is otherwise unable to perform his duty. The trial may proceed in the absence of a juror so discharged upon the stipulation of the parties. In the absence of such a stipulation, the jury shall be discharged and a new jury shall be formed to hear the case.

Sec. 7.4. A defendant shall be presumed to be innocent of the charge until the contrary is proved by the prosecutor beyond a reasonable doubt.

Sec. 7.5. A departure from the provisions of this Title shall not render proceedings hereunder invalid unless such

departure was prejudicial to the defendant.

Sec. 7.6. In the case of the death, illness or other incapacity of the judge, any other judge designated by the Chief Judge may complete the proceedings and shall have the same power, authority and jurisdiction as the original judge would have in the absence of his incapacity.

Section 8. Verdict. After the close of evidence, the judge shall render a verdict or, in a jury trial, the judge may direct a verdict of acquittal. Except in case of a directed verdict, the jury shall retire to determine a verdict after the charge. All instructions, physical evidence and notes taken by the jurors shall be available to them. The jury shall remain in the charge of a Police Officer appointed by the Court until discharged by the judge. During its deliberation, the jury may return to Court to request further instructions from the judge or request that the Clerk shall read portions of the transcript of any testimony in the case. The jury must render a unanimous verdict of "Guilty", "Not Guilty" or "Not Guilty By Reason of Insanity" on every allegation in the complaint. After the verdict of the jury has been announced to the judge or in case the jury is unable to reach a verdict the judge shall discharge the jury.

Section 9. Sentence. Within a reasonable time after a verdict or plea of guilty and after such pre-sentencing investigation as the judge may direct, the judge shall sentence the

defendant in conformity with the applicable provisions of this Code and deliver to a Police Officer a signed copy of the sentence. When a defendant is sentenced to pay a fine, the Court may permit payment within a definite period or by instalment. In the absence of such permission, a fine shall be payable forthwith. Fines, and any instalment thereof, shall be payable to the Clerk.

Section 10. Default in Payment of Fines. When a defendant defaults in the payment of a fine, or any instalment thereof, the Court, on its own motion or on application by the Prosecuting Attorney, shall order the defendant to show cause why he is not in contempt and may issue a summons or an arrest warrant for the defendant's appearance. Unless the defendant shows that he has made a good faith effort to obtain funds to make payment, the Court may order his imprisonment until the fine is paid or until the end of six (6) months, whichever is sooner. Where good faith is shown, the Court may allow additional time for payment or revoke all or part of the unpaid fine. Upon any such default, the Court may order the seizure and sale of any personal property of the defendant found within the Choctaw Reservation, in accordance with the applicable provisions of Title IV of this Code.

Section 11. Suspension of Sentence.

Sec. 11.1. The Court may upon such reasonable terms and conditions as it considers necessary to assist the defendant to lead a new life, following Choctaw laws and applicable

Federal and State laws, suspend any sentence and release a prisoner on probation. In granting probation the judge shall consider the prior criminal record of the prisoner, his background, character, financial condition, family obligations and other reasonably relevant circumstances.

Sec. 11.2. The Court, as a condition of its order, may require the defendant:

- (1) to meet his family responsibilities;
- (2) to devote himself to a specific employment or occupation;
- (3) to undergo available medical or psychiatric treatment or attend regular rehabilitation programs, such as Alcoholics Anonymous or similar meetings, and to enter and remain in a specified institution, when required for that purpose;
- (4) to pursue a prescribed secular course of study or vocational training;
- (5) to attend or reside in a facility established for the instruction, recreation or residence of persons on probation;
- (6) to refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
- (7) to have in his possession no firearm or other dangerous weapon unless granted written permission;
- (8) to make restitution of the fruits of his crime or to make reparation, in an amount he can afford to pay, for the loss or damage caused thereby;

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(9) to remain within the jurisdiction of the Court and to notify the Court or the probation officer of any change in his address or employment;

(10) to report as directed to the Court or the probation officer and to permit the officer to visit his home;

(11) to post a bond, with or without surety, conditioned on the performance of any of the foregoing obligations;

(12) to satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.

Sec. 11.3. Upon the expiration of the term fixed for such probation, the probation officer shall report that fact to the Court, with a statement of the conduct of the probationer while on probation, and the Court may thereupon discharge the probationer from further supervision, or may extend the probation, as shall seem advisable. At any time during the probationary term the Court may:

(1) modify the terms and conditions of the order of probation, or may terminate such probation, when in the opinion of the Court the ends of justice shall require, and when the probation is so terminated the Court shall enter an order discharging the probationer from serving the imposed penalty; or

(2) revoke the order of probation and cause the re-arrest of the probationer and impose a sentence and require him to serve the sentence or pay the fine originally imposed,

or both, as the case may be, and the time of probation shall not be taken into account to diminish the time for which he was originally sentenced.

Section 12. Post-Trial Motions.

Sec. 12.1. At any time after the verdict and prior to the completion of a sentence, a convicted defendant may apply for a new trial. A new trial may be granted by the Court for the following causes:

(1) receipt by the jury of evidence not authorized by the Court;

(2) determination of a verdict by lot, through intimidation, or otherwise without a fair expression of opinion;

(3) when the Court has refused to instruct the jury correctly as to the law;

(4) when for any other cause the defendant has not received a fair and impartial trial.

Sec. 12.2. After a jury verdict of guilty is announced, the defendant may move to set aside the verdict on the grounds that it was contrary to the law or the evidence. The judge shall grant such a motion if he determines that there was insufficient evidence to support the verdict or that, as a matter of law, there was reasonable doubt as to the defendant's guilt.

Section 13. Appeals. Appeals may be taken from the final order of any judge of the Tribal Court to the Choctaw Court of Appeals by filing with the clerk a notice of appeal within fifteen (15) days of the entry of the order from which the appeal is taken. The Court of Appeals may affirm or reverse the order of the Choctaw Court, order a new trial, or may increase or decrease any sentence or fine. On appeal, each case shall be tried anew, except for questions of fact submitted to a jury in the Choctaw Court.

TITLE III
CRIMINAL OFFENSES

Section 1. Abandoned Iceboxes and Other Containers. Any person who shall have on his premises any abandoned chest, ice-box or other container not in active use, any door to which has a latch or lock which automatically fastens upon the door being closed and which cannot readily be opened from the inside, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs, and shall be ordered to remedy the defect at his own expense.

Section 2. Abandoned Motor Vehicles. Any person who permits any motor vehicle owned by him to remain for a period of forty-eight (48) hours or more on any road or right-of-way so as to cause an unsightly condition in the community or shall keep such a vehicle in any other place for a period of more than thirty (30) days so as to cause such a condition shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than five (5) days or to pay a fine of not more than ten dollars (\$10), or both, with costs, and the vehicle may be removed at his expense.

Section 3. Abduction. Any person who shall knowingly restrain another person unlawfully so as to interfere substantially with his liberty or knowingly and recklessly takes

or entices a child under eighteen (18) from the custody of its parent or other lawful custodian, when he lacks lawful permission to do so, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 4. Abuse of Office. Any person who shall subject another to arrest, detention, search, seizure, mistreatment, dispossession, or shall deny or impede another in the exercise or enjoyment of any right, privilege, power, or immunity, by acting or purporting to act in an official capacity on behalf of the Mississippi Band of Choctaw Indians or the United States Government, or taking advantage of such actual or purported capacity, knowing that his conduct is illegal, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 5. Adulteration of Food and Drink. Any person who shall manufacture, sell or keep or offer for sale any food, drug or drink in the making of which any harmful substance is used shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than two hundred fifty dollars (\$250), or both, with costs.

Section 6. Advertisements, Pulling Down. Any person who shall, without proper authorization, pull down or deface any sign or advertisement authorized by law shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than fifteen (15) days or to pay a fine of not more than twenty five dollars (\$25), or both, with costs.

Section 7. Assault. Any person who shall willfully attempt or threaten bodily harm to another person through unlawful force or violence shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than fifty dollars (\$50), or both, with costs.

Section 8. Assault and Battery. Any person who shall willfully strike another person or otherwise inflict any bodily injury or who shall by offering violence cause another to harm himself shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 9. Bigamy. Any person who, being married to another, marries any other person, shall be guilty of an offense provided that no person shall be guilty thereof who believes that the prior spouse is dead or whose original spouse

shall have been absent for seven successive years, without being known to be living, or if the original marriage has been dissolved, pronounced void or annulled by the decree of a court of competent jurisdiction. Upon conviction thereof such person shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 10. Bribery. Any person who shall give or offer to give any money, property, services or other gain or advantage to another person with corrupt intent to influence such person in the discharge of his public duties or conduct and any person who shall accept, solicit or attempt to solicit any bribe as above defined, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs, and any Tribal Office held by such person shall be forfeited.

Section 11. Causing or Aiding Suicide. Any person who shall purposely aid another to commit suicide shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 12. Child Abuse. Any person who shall by willful and malicious acts of violence physically abuse any child under the age of eighteen (18) shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 13. Child Neglect. Any person who is a parent, guardian or otherwise has legal custody of a child under the age of fifteen (15) years and shall leave such child unattended (or attended by a person not competent to care for the child) shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of twenty five (25) days or to pay a fine of not more than fifty dollars (\$50), or both, with costs.

Section 14. Compulsory School Attendance. Any person who shall, without good cause, neglect or refuse to send any child of such person under the age of sixteen (16), including an illegitimate child or a child in the lawful custody of such person, to school unless such child is married, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ten (10) days or to pay a fine of not more than fifty dollars (\$50), or both, with costs.

Section 15. Conspiracy to Commit Offense or to Defraud Mississippi Band of Choctaw Indians. If two or more persons

conspire, either to commit any offense under this Title or to defraud the Mississippi Band of Choctaw Indians or any department or agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs, except that if the object of the conspiracy is a criminal offense punishable by a lesser penalty, the maximum penalty for the conspiracy shall not exceed the maximum penalty provided for the offense.

Section 16. Contributing to the Delinquency of a Child.

Any person eighteen (18) years of age or older who knowingly causes, encourage, or advises a child under the age of eighteen (18) to commit an offense as defined in Title III of this Code or knowingly causes, encourages, or assists such a child to be a delinquent child as defined in Title VI of this Code shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than one hundred twenty (120) days or to pay a fine of not more than three hundred sixty dollars (\$360), or both, with costs.

Section 17. Criminal Attempt. Any person who shall attempt to commit any offense under this Title shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than the period specified

herein for the offense attempted or to pay a fine not in excess of the amount provided for the offense attempted, or both, with costs.

Section 18. Criminal Trespass - Buildings. Any person who shall enter or secretly remain in any building or occupied structure, or separately secured or occupied portion thereof, knowing that he is not licensed or privileged to do so, whether by day or night, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than one hundred twenty (120) days or to pay a fine of not more than four hundred dollars (\$400), or both, with costs.

Section 19. Criminal Trespass - Lands. Any person who shall enter or remain upon any lands as to which notice against trespass is given by actual communication to such person, or by posting in a manner reasonably likely to come to the attention of intruders, or by fencing or other enclosure manifestly designed to exclude intruders, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 20. Cruelty to Animals. Any person who shall torture, mistreat, mutilate, override, overdrive or overload or deprive of food and drink, or abandon any animal which he owns or which is in his custody, or cause or procure the same,

shall be guilty of an offense and shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 21. Cutting Fence. Any person who shall willfully cut the wire of a fence belonging to another person without his consent shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than one hundred twenty dollars (\$120), or both, with costs.

Section 22. Cutting Green Timber without a Permit. Any person who without first securing a permit from the Mississippi Band of Choctaw Indians cuts any standing green timber for commercial purposes on tribal land shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than two hundred fifty dollars (\$250), or both, with costs.

Section 23. Desertion and Nonsupport of Children. Any person who shall desert or willfully neglect or refuse to provide for the support or maintenance of a child of such person under eighteen (18) years of age, including an illegitimate child or a child in the lawful custody of such person, when such person is financially able to provide therefor, shall be sentenced to jail for a period of not more than six (6) months

to pay a fine of not more than five hundred dollars (\$500), both, with costs.

Section 24. Disobedience of Lawful Order of Court. Any person who shall willfully disobey any order, subpoena, summons, warrant or command duly issued, made or given by any court of the Mississippi Band of Choctaw Indians or any judge thereof shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than one hundred eighty dollars (\$180), or both, with costs.

Section 25. Disorderly Conduct. Any person who shall, with intent or purpose to cause public inconvenience, annoyance or alarm, engage in fighting or violent behavior in a public place, disturb or interrupt any public or religious assembly by unreasonable noise or abusive language to any person present or create a hazardous or physically offensive condition by any act which serves no legitimate purpose shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than sixty dollars (\$60), or both, with costs.

Section 26. Disposing of Property of an Estate. Any person who without proper authority, sells, trades or otherwise disposes of any property of an estate before the determination of the heirs shall be guilty of an offense and upon conviction

ceof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than one hundred eighty dollars (\$180), or both, with costs.

Section 27. Distribution of Tobacco and Alcohol to Children. Any person who shall sell, barter or give any cigar, cigarette, or smoking tobacco or any alcoholic beverage to any child under the age of fourteen (14) years shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than two hundred fifty dollars (\$250), or both, with costs.

Section 28. Drawing Bad Checks, etc. Any person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs. An issuer is presumed to know that the check or order (other than a post-dated check or order) should not be paid, if:

(a) the issuer had no account with the drawee at the time the check or order was issued; or

(b) payment was refused for lack of funds, upon presentation within thirty (30) days after issue, and

the issuer failed to make good within ten (10) days after receiving notice of that refusal.

Section 29. Embezzlement. Any person who shall, having lawful custody of property not his own, appropriate the same to his use with intent to deprive the owner thereof, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs. As used in this section, embezzlement shall include the spending of minor's funds by parents or guardians for other than the purpose for which the funds were placed in the custody of the parents or guardians.

Section 30. Escape. Any person who shall unlawfully remove himself from official detention or fail to return to official detention following temporary leave granted for a specific purpose or limited period (excluding probation, parole, release on bail) shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than one hundred eighty (180) days or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 31. Extortion. Any person who compels or induces another person to deliver property or anything of value to himself or to a third person by threatening that the actor or another will:

- (a) cause physical injury to some person;
- (b) cause damage to property;
- (c) accuse some person of a crime or cause criminal charges to be brought against some person;
- (d) publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule;
- (e) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (f) use or abuse an official position by performing some act within or related to his official duties or failing or refusing to perform an official duty in such a manner as to affect some person adversely;

shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than three hundred dollars (\$300), or both, with costs.

Section 32. False Alarms. Any person who knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life and property shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more

thirty (30) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 33. False Arrest. Any person who shall willfully and knowingly make, or cause to be made, the unlawful arrest, detention or imprisonment of another shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than three hundred dollars (\$300), or both, with costs.

Section 34. Fire, Failure to Control or Report. Any person who knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire (when he can do so without substantial risk to himself) or (in any event) to give a prompt fire alarm, if he knows that he is under an official, contractual or other legal duty to prevent or combat the fire or if the fire was started, lawfully, or unlawfully, by him or with his assent, or on property in his custody or control, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 35. Firing Guns. Any person who fires a gun within any area designated as a settled community by resolution of the Tribal Council on the Choctaw Reservation (or in any

other place on the Reservation with careless disregard for human life or property) shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for not more than thirty (30) days or to pay a fine of not more than fifty dollars (\$50), or both, with costs.

Section 36. Firing Timber. Any person who shall willfully set on fire any timber, woods, meadow, marsh, field or prairie, not his own, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than three hundred dollars (\$300), or both, with costs.

Section 37. Flags - Desecration Thereof. Any person who in any manner for exhibition or display shall place or cause to be placed any mark, word, or design upon, or shall publicly mutilate, deface or defile, or use in connection with any advertisement of any nature, any official flag, color or ensign of the United States, the State of Mississippi, or the Mississippi Band of Choctaw Indians, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than fourteen (14) days or to pay a fine of not more than fifty dollars (\$50), or both, with costs.

Section 38. Flight to Avoid Prosecution or Judicial Process. Any person who shall absent himself from the Reservation for the purpose of avoiding arrest, prosecution or other

judicial process shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than fifty (50) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 39. Forgery and Counterfeiting. Any person who shall, with intent to defraud, falsely sign, execute, alter or counterfeit, or transmit as genuine any written instrument or currency shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 40. Fraud. Any person who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures, obtain any money or other property shall be guilty of fraud and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than one hundred fifty dollars (\$150), or both, with costs.

Section 41. Indecent Exposure. Any person who exposes his sexual parts under circumstances in which he knows his conduct is likely to cause affront or alarm, shall be guilty of an offense, and upon conviction thereof shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than fifty dollars (\$50), or both, with costs.

Section 42. Injury to Government Property. Any person who by any means whatever shall willfully or mischievously injure, destroy or deface any building or other property of the Mississippi Band of Choctaw Indians or of the United States Government or deface or write upon any walls or shall injure the grounds appurtenant thereto or the trees, fences, soil or pavement thereof shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 43. Liquor Violation. Any person who shall within the limits of the Choctaw Reservation sell, barter, transport or manufacture any alcoholic beverage shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 44. Littering. Any person who shall dispose of any garbage or other forms of litter or waste anywhere within the Choctaw Reservation except in public waste disposal grounds designated by the Tribal Council shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than fifteen (15) days or to pay a fine of not more than twenty five dollars (\$25), or both, with costs.

Section 45. Maintaining a Public Nuisance. Any person who shall act in such a manner, or permit his property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his neighbors, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than two hundred dollars (\$200), or both, with costs, and may be required to remove such nuisance when so ordered by the Court.

Section 46. Malicious Mischief. Any person who shall maliciously injure or destroy any tangible property of another shall be guilty of malicious mischief and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 47. Marijuana. Any person who shall plant, grow, cultivate, keep for sale, sell, barter, give, have possession of or use any Cannabis Indica or any mixture or compound thereof, or any cigarettes, cigars or other commodities intended for smoking in which there is a mixture thereof, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 48. Misbranding. Any person who shall knowingly and willfully misbrand, alter or deface any brand or mark intended to designate ownership on any livestock of another without the consent of the owner and with the intent to deprive the owner of his property, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than two hundred dollars (\$200), or both, with costs.

Section 49. Narcotics and Dangerous Drugs. Any person who knowingly possesses, sells, trades, transports, gives away, uses or manufactures:

(a) any opium, cocaine, coca leaves, morphine, codeine, heroin, or any derivative thereof; or

(b) any drugs known as hallucinogen, psychotomimetics dysleptic, or psychedilics including lysergic acid diethylamide (LSD), mescaline, psilocybin, dimethyltrystamine (DMT), and methydimethoxy methyl-phenyl-ethylamine (STP); or

(c) any drug scheduled as a "controlled substance" under the provisions of Title 21, Chapter 13 of the United States Code, as amended to the date of arrest, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 50. Obstructing Justice. Any person who with the purpose of hindering the apprehension, prosecution, conviction or punishment of another for a crime, shall harbor or conceal another, provide a weapon, transportation or other means of escape, warn another of impending discovery or volunteer false information to a Police Officer, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than two hundred fifty dollars (\$250), or both, with costs.

Section 51. Operating Business Without Permit. Any person who shall engage in any business on the Reservation without first obtaining a business license from the Tribal Council shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 52. Perjury. Any person who shall willfully and deliberately, in any judicial proceeding in any court of the Mississippi Band of Choctaw Indians, falsely swear or interpret, or shall make a sworn statement or affidavit knowing the same to be untrue, or shall induce or procure another person to do so, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than one hundred

twenty (120) days or to pay a fine of not more than three hundred dollars (\$300), or both, with costs.

Section 53. Public Drunkenness; Drug Incapacitation. Any person who shall appear in any public place manifestly under the influence of alcohol, or any other drug or narcotic, to the degree that he may endanger himself or another human or property, or annoy humans in his vicinity, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than fifty dollars (\$50), or both, with costs. Drunkenness alone in the absence of the foregoing aggravating factors shall not be an offense.

Section 54. Prostitution. Any person who shall engage in sexual activity as a business or who shall knowingly keep, maintain, rent or lease any house, room or tent or other place for the purpose of so engaging shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than three hundred dollars (\$300), or both, with costs.

Section 55. Receiving Stolen Property. Any person who shall receive or conceal or aid in receiving or concealing any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, theft or burglary, shall be guilty of an offense and upon conviction thereof shall be sentenced to

jail for a period of not more than ninety (90) days or to a fine of not more than three hundred dollars (\$300), or both, with costs.

Section 56. Recklessly Endangering Another. Any person who recklessly engages in conduct which places or may place another in danger of death or serious bodily injury shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than two hundred fifty dollars (\$250), or both, with costs, and may be required to furnish a satisfactory peace bond for one year. Recklessness and danger shall be presumed where a person knowingly points or discharges a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

Section 57. Removal of Landmarks. Any person who shall willfully remove, alter or destroy any boundary marker or other landmark erected by the Mississippi Band of Choctaw Indians or the United States Government within the limits of the Reservation shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than fifty dollars (\$50), or both, with costs.

Section 58. Resisting Lawful Arrest or Process. Any person who shall willfully and knowingly, by force or violence,

resist or assist another person to resist a lawful arrest, or the serving or execution of any legal process, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 59. Rigging Games or Exhibitions. Any person who shall, with the purpose of preventing a publicly exhibited contest or game from being conducted in accordance with the rules and usages purporting to govern it, confer or offer or agree to confer or solicit or accept any benefit upon, or threaten any injury to, a participant, official or other person associated with the contest or game or tampers with any person, animal or thing, shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than two hundred fifty dollars (\$250), or both, with costs.

Section 60. Sale of Property Subject to Mortgage or Other Lien. Any person who shall sell, trade or otherwise dispose of property which is mortgaged or subject to a lien for the purpose of depriving a creditor of his security interest therein shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 61. Sexual Assault. Any person who subjects another person not his spouse to any sexual contact shall be guilty of an offense if:

(a) he knows that the contact is offensive to the other person; or

(b) he knows that the other suffers from a mental disease or defect which renders him or her incapable of recognizing the nature of his or her conduct; or

(c) he knows that the other is unaware that a sexual act is being committed; or.

(d) the other is less than sixteen (16) years of age; or

(e) he has substantially impaired the other's power to understand or control his or her conduct, by administering without the other's knowledge, drugs, intoxicants or other means to prevent resistance; or

(f) the other is less than twenty one (21) years of age and the actor is his guardian or other lawful custodian; or

(g) the other is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

Upon conviction thereof he shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not

more than five hundred dollars (\$500), or both, with costs.

Sexual contact is any touching of the sexual or other intimate parts of another person for the purpose of arousing or gratifying sexual desire of either party.

Section 62. Witness Tampering; Destruction of Evidence.

Any person who shall, believing that an official proceeding or investigation is pending or about to be instituted, attempt to induce a witness to testify or inform falsely or avoid legal process or absent himself from any proceeding or investigation to which he has been legally summoned or who shall alter, destroy or conceal any document or thing to impair its authenticity or availability in such proceeding or investigation shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than three hundred dollars (\$300), or both, with costs.

Section 63. Theft. Any person who shall take, or exercise unlawful control over, the moveable property of another with the purpose to deprive the other thereof or who unlawfully transfers immovable property of another or any interest therein with the purpose to benefit himself or another not entitled thereto shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months

or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 64. Threat or Intimidation. Any person who, directly or indirectly, utters or addresses any threat of unlawful harm to any other person with the purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant or voter or to influence a public official to violate any public duty shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than ninety (90) days or to pay a fine of not more than two hundred fifty dollars (\$250), or both, with costs.

Section 65. Unauthorized Leasing. Any person who enters into any lease within the Reservation in violation of any ordinance of the Council shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than six (6) months or to pay a fine of not more than five hundred dollars (\$500), or both, with costs.

Section 66. Unsworn Falsifications. Any person who shall, with the purpose of misleading a public servant in the performance of an official function, make a false written statement which he does not believe to be true or submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity shall be guilty of an offense

and upon conviction thereof shall be sentenced to jail for a period of not more than sixty (60) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs.

Section 67. Vehicles - Unauthorized Use Of. Any person who shall operate another's automobile, motorcycle, motor boat or other motor-propelled vehicle without the consent of the owner shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than thirty (30) days or to pay a fine of not more than one hundred dollars (\$100), or both, with costs. It is an affirmative defense to prosecution under this Section 67 that the defendant reasonably believed that the owner would have consented to the operation if he had known of it.

Section 68. Vehicles - Unlicensed Drivers. Any person who shall operate an automobile or other motor-propelled vehicle on any public road, street, or way within the limits of the Choctaw Reservation unless he has in his possession a currently valid driver's permit applicable to such vehicle issued under the laws of the State of Mississippi (or of another State if the possession of such license entitles him to operate a vehicle on Mississippi highways under the laws of Mississippi) shall be guilty of an offense and upon conviction thereof shall be sentenced to pay a fine of not more than fifteen dollars (\$15), with costs.

Section 69. Venereal Disease - Infecting Another. Any person who infects another person with a venereal disease shall be guilty of an offense and upon conviction thereof shall be sentenced to jail for a period of not more than five (5) days or to pay a fine of not more than ten dollars (\$10), or both, with costs. The Court also can order the medical examination of any person charged hereunder and the treatment of any person convicted hereunder.

TITLE IV

CIVIL PROCEDURE

Section 1. Law Applicable in Civil Actions. In all civil actions the Choctaw Court shall apply applicable laws of the United States and authorized regulations of the Secretary of the Interior and ordinances, customs and usages of the Tribe. Where doubt arises as to customs and usages of the Tribe, the Court may request the advice of persons generally recognized in the community as being familiar with such customs and usages. Any matter not covered by applicable Federal law and regulations or by ordinances, customs and usages of the Tribe shall be decided by the Court according to the laws of the State of Mississippi.

Section 2. Commencement of Civil Action.

Sec. 2.1. A civil action shall be commenced in the Choctaw Court by the filing of a statement of claim which shall be short and in ordinary language. The plaintiff or his agent shall verify the statement of claim by oath or affirmation and shall sign the statement of claim.

Sec. 2.2. At the request of the plaintiff the Clerk shall prepare the statement of claim and other papers required to be filed in a civil action, but his services are not available to a corporation, partnership, association or public body in the preparation of the statement or other papers.

Sec. 2.3. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. Service shall be made by a Police Officer or by registered mail or certified mail, return receipt requested, or by a person not a party to or otherwise interested in the action, especially appointed by the judge for that purpose.

Sec. 2.4. When notice is to be served by registered mail or by certified mail, the Clerk shall enclose a copy of the statement of claim, verification, and notice in an envelope addressed to the defendant, prepay the postage with funds obtained from the plaintiff, and mail the papers forthwith, noting on the Court records the day and hour of mailing. When the receipt is returned, the Clerk shall attach it to the original statement of claim, and it constitutes prima facie evidence of service upon defendant.

Sec. 2.5. When notice is served by a private individual, he shall make proof of service by affidavit before the Clerk, showing the time and place of service.

Sec. 2.6. When service is made by a Police Officer, or by registered or certified mail, the actual cost of service is taxable to the losing party as costs. When notice is served by an individual, the cost of service, if any, is not taxable as costs.

Sec. 2.7. The statement of claim, verification, and notice shall be substantially in the following form:

THE CHOCTAW COURT

Pearl River Community
Choctaw Reservation
Mississippi

_____)	
Plaintiff)	
)	
_____)	
Address)	
)	
vs.)	No. _____
)	
_____)	
Defendant)	

Statement of Claim

[Here, the plaintiff or, at his request, the Clerk, will insert a statement of the plaintiff's claim and the original, to be filed with the Clerk, may be verified by the plaintiff or his agent, as follows]

STATE OF MISSISSIPPI ss:

_____, being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to the plaintiff, (or "of the claim made by the plaintiff upon the defendant") exclusive of any set-off or just grounds of defense.

Plaintiff (or agent)

Subscribed and sworn to before me this _____ day of _____ 19__.

Notary Public

Notice

To: _____
Defendant

Home Address

Business Address

You are hereby notified that [Plaintiff] has made a claim and is requesting judgment against you in the sum of _____ dollars (\$_____) [insert other relief requested, if any], as shown in the foregoing statement. The Choctaw Court will hold a hearing upon this claim on _____ at _____ m. in the Choctaw Courthouse, Pearl River Community, Mississippi.

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts or other papers bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the Clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the Court.

You may come with or without an attorney.

Clerk of the Choctaw Court

Sec. 2.8. The foregoing verification entitles the plaintiff to a judgment by default, without further proof, upon failure of defendant to appear, if the claim of the plaintiff is for a liquidated amount less than \$100,000. If the amount is unliquidated or in excess of \$100,000, the plaintiff shall be required to present proof of his claim.

Sec. 2.9. The Clerk shall furnish the plaintiff with a notice of the day and hour set for the hearing, not less than 30 nor more than 45 days from the filing of the civil action.

Section 3. Fees and Costs, Waiver. The fee for issuing summons and copies, trial judgment and satisfaction in a civil action in the Choctaw Court shall be not more than \$1.00. Other fees shall be as the Court prescribes. The judge may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or other satisfactory evidence of his ability to pay the costs. When costs are so waived, the Clerk shall enter "costs waived" or "prepayment of costs waived" in the Court records. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new claim in the Court while the costs remain unpaid and deny him the right to proceed further in any claim pending in the Court.

Section 4. Counterclaim or Set-Off. If the defendant in a civil action asserts a counterclaim or set-off, the judge may

require a formal statement of counterclaim or set-off to be filed or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for a reasonable period for that purpose.

Section 5. Trial.

Sec. 5.1. On the return day specified as provided in Section 2.9., or at such later time as the judge sets, the action shall go to trial. Immediately prior to trial, the judge shall make an earnest effort to settle the dispute by conciliation. If he fails to persuade the parties to settle the dispute without a trial, he shall proceed with the hearing on the merits as provided in Section 5.2. subject to provision for jury trial in Section ____.

Sec. 5.2. The parties and the witnesses shall be sworn. The judge shall conduct the trial in such manner as to do substantial justice between the parties according to applicable law and the customs and usages of the Tribe, and is not bound by rules of practice, procedure, pleading, or evidence, except for rules related to privileged communications.

Sec. 5.3. If the defendant fails to appear, judgement shall be entered for the plaintiff by default as provided in Section 2.8. or on the presentation of proof by the plaintiff alone. If the

plaintiff fails to appear, the action may be dismissed for want of prosecution or the defendant may proceed to a trial on the merits or the case may be continued or returned to the files for further proceedings at a later date, as the judge may direct in the interest of justice. If both parties fail to appear, the judge may return the case to the files or order the action dismissed for want of prosecution or make any other just and proper disposition thereof as justice requires.

Section 6. Judgment.

Sec. 6.1. In all civil actions judgment shall consist of an order of the Court awarding money damages or an order directing the surrender of certain property to the injured party or the performance of some other act for the benefit of the injured party. When the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss. When the injury was deliberately inflicted, the judgment shall impose an additional penalty on the defendant. When the injury was inflicted as the result of an accident and both the plaintiff and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss.

Sec. 6.2. When judgment for money damages is to be rendered in a civil action and the party against whom it is to be rendered

requests it, the judge shall inquire fully into his earnings and financial status and may stay the entry of judgment, and stay execution, except in cases involving wage claims, and order partial payments in such amounts, over such periods, and upon such terms, as seems just in the circumstances and will assure a definite and steady reduction in the judgment until it is completely satisfied. Upon a showing that the party has failed to meet an installment payment without just excuse, the stay of execution shall be vacated.

Sec. 6.3. When a stay of execution has not been ordered or when a stay of execution has been vacated, a party in whose favor a judgment has been entered may avail himself of all remedies provided for in Section 11.

Section 7. Judgment for Wages. When a judgment rendered in a civil action is founded in whole or in part on a claim for wages for personal services, the judge shall, upon motion of the party obtaining judgment, order the appearance of the party against whom the judgment has been entered, but not more often than once each week for four weeks, for oral examination under oath as to his financial status and his ability to pay the judgment, and the judge shall make such other orders as seems just and proper to cause the payment of the judgment upon reasonable terms.

Section 8. Award of Costs. In civil actions the award of costs is in the discretion of the judge, who may include therein the reasonable cost of bonds and undertakings and other reasonable expenses of either party incidental to the action.

Section 9. Payment of Judgments from Individual Moneys. When the Court shall have ordered payment of money damages and the losing party refuses to make payment as provided by the Court and has sufficient moneys in his Individual Indian Monies account to pay all or part of the judgment, the disbursing agent in control of such account shall pay over to the injured party the amount of the judgment or such lesser amount as may be held to the credit of the party. A judgment shall be considered a lawful debt in all proceedings to distribute an Indian decedent's estate.

Section 10. Full Faith and Credit. Full faith and credit shall be given by the Choctaw Court in civil actions to the judgments of Federal courts and to any State or tribal courts which are courts of record.

Section 11. Enforcement of Judgments. The Court may enforce judgments in civil actions by issuance of an execution to a Police Officer against any personal property of the losing party located within the Reservation, returnable not less than 10 days after the date of issuance. No judgment shall be enforceable more than 5 days from the date thereof unless renewed by order of the Court.

Section 12. Limitation of Actions. The Court shall have no jurisdiction over a claim when a statement of claim is filed more than two years after the claim arose.

Section 13. "Long-Arm" Section. Any person subject to the jurisdiction of the Choctaw Court may be served outside the Reservation in the manner provided above with the same force and effect as if service had been made within the Reservation if such person is a member of the Tribe or resides or does business within the Reservation.