

T. OPTIA
L.E.S.

~~Division of Indian Affairs~~
Phoenix Area Office
P. O. Box 1932
Phoenix, Arizona 85001

Tribal Operations
(602) 241-2314
FTS 261-2314

SEP 26 1983

Through: Superintendent, Western Nevada Agency

Mr. Elvin Willie, Jr.

Chairman, Walker River Paiute Tribe

Dear Mr. Willie:

On June 28, 1983, the Walker River Paiute Tribal Council reenacted Ordinance No. WR-01-83B which was approved by the Western Nevada Agency Superintendent on July 5, 1983. The Superintendent's approval is subject to Secretarial review pursuant to Article V, Section 2 of the Tribe's Constitution.

Ordinance No. WR-01-83B establishes the following Law and Order Codes for the Walker River Paiute Tribal Court:

- Title 1 - The Tribal Court
- Title 2 - Civil Procedures
- Title 3 - Torts
- Title 4 - Criminal Procedures
- Title 5 - Code of Criminal Offenses
- Title 6 - Evidence
- Title 7 - Vehicles
- Title 9 - Domestic Relations
- Title 12 - Probate

Ordinance No. WR-01-82A was originally enacted on December 28, 1982, and approved by the Superintendent on January 5, 1983. However, the Superintendent's approval was rescinded on March 11, 1983 because the Law and Order Code contained seven major crimes in Sections 5-30-010, 5-30-020(b), 5-30-030, 5-30-050, 5-40-010, 5-40-030, and 5-40-050, over which the Tribe lacks jurisdiction.

We have reviewed the reenacted ordinance and find the deficiencies have been corrected. The ordinance contains a few typographical errors which have no bearing on the substance of the ordinance and are listed on a separate listing. It is recommended these errors be corrected in a separate resolution or ordinance at a later date.

Overall, we find all recommendations have been taken into consideration in finalizing this law and order code. With this input, we see no reason to rescind the Superintendent's July 5 approval. Therefore, Ordinance No. WR-01-83B remains in full force and effect as of July 5, 1983.

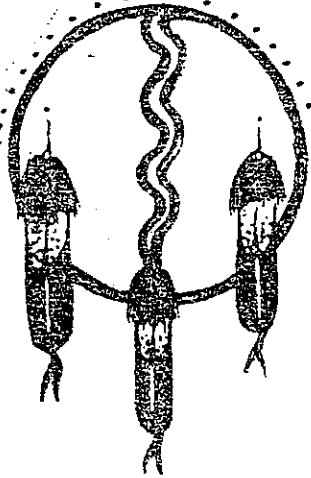
Sincerely,

JAMES H. STEVENS

Area Director

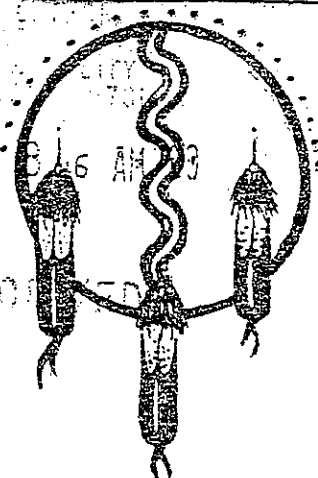
Enclosure

cc: ~~Superintendent, Western Nevada Agency~~
Field Solicitor, Phoenix
PAO, Law Enforcement Services
Judicial Services, Washington, D.C. CODE 440



Walker River Paiute Tribe
Walker River Indian Reservation
Schurz, Nevada
(702) 773-2306

JUN 30



RECEIVED

ORDINANCE OF THE GOVERNING BODY
OF THE
WALKER RIVER PAIUTE TRIBE

ORDINANCE NO. WR-01-83B

BE IT ENACTED BY THE TRIBAL COUNCIL OF THE WALKER RIVER PAIUTE TRIBE:

AN ORDINANCE TO DEFINE AND ESTABLISH REGULATIONS AND PROCEDURES GOVERNING LAW AND ORDER PROCEEDINGS IN AND FOR THE TRIBAL COURT OF THE WALKER RIVER PAIUTE TRIBE.

WHEREAS, the governing body of the Walker River Paiute Tribe of Nevada adopted a Constitution and By-Laws in accordance with Section 16 of the Indian Reorganization Act on February 20, 1937, and approved by the Acting Secretary of the Interior on March 19, 1937, and as amended, and

WHEREAS, the Walker River Paiute Tribe of Nevada desires to prepare and define regulations and procedures governing Law and Order on the Reservation, and

WHEREAS, the following titles of the Law and Order Code have been studied and considered:

- Title 1 - The Tribal Court
- Title 2 - Civil Procedure
- Title 3 - Torts
- Title 4 - Criminal Procedure
- Title 5 - Code of Criminal Offenses
- Title 6 - Evidence
- Title 7 - Vehicles
- Title 9 - Domestic Relations
- Title 12 - Probate

THEREFORE BE IT RESOLVED, that the Walker River Paiute Tribe of Nevada does hereby provide the following regulations and procedures to be followed in the Walker River Tribal Court, and

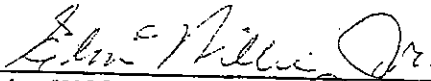
BE IT FURTHER RESOLVED that these ordinances shall become effective upon the date of approval of the Secretary of the Interior, and

BE IT FINALLY RESOLVED that the following Ordinances and Resolutions are hereby rescinded upon the final approval of these NEW Ordinances:

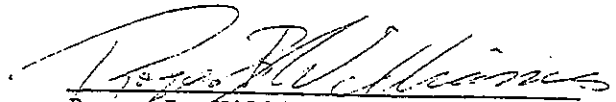
Ordinance No. III	Adoption into the Tribe
Ordinance No. IV	Gambling
Unnumbered (1951)	Adoption into the Tribe
No. WR-57-2	Liquor Control
No. WR-573	Liquor Control
No. WR-58-3 (1958)	Liquor Control
No. WR-62-5 (1962)	Minors Loitering
No. WR-67-1 (1967)	Associate Judge Appointment
No. WR-67-2 (1967)	Signs
No. WR-72-1 (1972)	Motorcycle Operation
No. WR-I-77 (1977)	Motor Vehicle

CERTIFICATION

It is hereby certified that the foregoing Ordinance of the Walker River Paiute Tribal Council of the Walker River Paiute Tribe composed of seven members, of whom 4 constituting a quorum were present at a meeting held on the 28th day of June, 1983, and that the foregoing ORDINANCE NO. WR-01-83B was adopted by the affirmative vote of 4 for and 0 against pursuant to the authority contained in the Constitution and By-Laws of the Walker River Paiute Tribe of Nevada, approved on March 29, 1937.



Elvin Willie, Jr., Tribal Chairman



Roger B. Williams, TREASURER

Absent

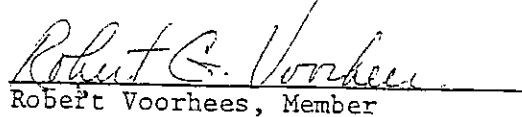
Douglas D. Quintero, VICE-CHAIRMAN

Absent

Walter Voorhees, Member



Norma Lessard, SECRETARY

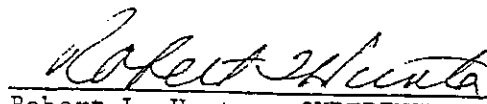


Robert Voorhees, Member

Absent

Ellison McMasters, Jr., Member

APPROVED BY:


Robert L. Hunter, SUPERINTENDENT

DATE:

7-5-1983

LAW AND ORDER CODE

Title 12 - Probate

Table of Contents

		<u>Page</u>
<u>12-10</u>	<u>JURISDICTION OF THE TRIBAL COURT -</u>	1
12-10-010	The Tribal Court Shall Have Jurisdiction	1
12-10-020	The Tribal Court Shall Not Have Jurisdiction Over Any Property	1
<u>12-20</u>	<u>WILLS -</u>	1
12-20-010	Definitions	1
12-20-020	Persons Capable of Making a Will	1
12-20-030	Requirements For Validity of Written Wills	2
12-20-040	Holographic Wills	3
12-20-050	Oral Wills	3
12-20-060	Recording and Filing of Wills	5
12-20-070	Revocation of Wills	6
12-20-080	Interpretation of Effect of Wills	7
<u>12-30</u>	<u>SUCCESSION TO PROPERTY -</u>	7
12-30-010	Definitions	7
12-30-020	Applicability	7
12-30-030	Distribution of Community Property	7
12-30-040	Order of Succession	8
12-30-050	Heirship of Acknowledged and Unacknowledged Children	10
12-30-060	Omitted Children	10
12-30-070	Advancements	11
<u>12-40</u>	<u>SIMULTANEOUS DEATH -</u>	12
12-40-010	General Rule	12
12-40-020	Succession in Case of Simultaneous Death; Community Property	12
12-40-030	Succession In Case of Simultaneous Death; Property Held In Joint Tenancy or Tenancy by the Entirety	12
12-40-040	Beneficiaries of Person's Disposition of Property	13
<u>12-50</u>	<u>TEMPORARY ADMINISTRATION OF AN ESTATE -</u>	13
12-50-010	Purpose of Appointment of Temporary Adminis- trator	13
12-50-020	Application	13
12-50-030	Notice of Application and Appointment	14
12-50-040	Procedure	14
12-50-050	Duties and Powers	15
12-50-060	Bond of Temporary Administrator	16
12-50-070	Report and Accounting of Temporary Adminis- trator; Release	16

Table of Contents

		<u>Page</u>
<u>12-60</u>	<u>ADMINISTRATOR OF ESTATES -</u>	16
12-60-010	Filing of Will or Memorandum of Oral Will	16
12-60-020	Filing of the Petition For Determination of Heirs of Intestate Decedent	17
12-60-030	Appointment of Administrator of Estate	17
12-60-040	Powers and Duties of Administrator	20
12-60-050	Bond; Expenses and Fees	20
12-60-060	Claims Against an Estate	21
12-60-070	Distribution of Estate	22
<u>12-70</u>	<u>INFORMAL ADMINISTRATION OF SMALL ESTATES -</u>	23
12-70-010	Definitions	23
12-70-020	Applicability	24
12-70-030	Procedure	24
12-70-040	Petition For Informal Administration	25
12-70-050	Notice of Petition For Informal Administration	26
12-70-060	Claims of Creditors	28
12-70-070	Collection and Distribution of Estate Assets by Successor's Affidavit	30
12-70-080	Termination of Informal Administration and Initiation of Formal Administration	33

12-10 JURISDICTION OF THE TRIBAL COURT

12-10-010 The Tribal Court Shall Have Jurisdiction -

- (a) To administer and distribute the estate, both real and personal, of any Indian who is a resident of the reservation at the time of his death; and
- (b) To administer and distribute all property, real and personal, located within the reservation at the time of the owner's death, irrespective of the residence of the owner at the time of death.

12-10-020 The Tribal Court Shall Not Have Jurisdiction Over Any Property - Property, real or personal, which at the time of a person's death is held in trust for that person by the United States, when and to the extent that an assertion of jurisdiction by the Tribal Court would conflict with a law or duly promulgated regulation of the United States.

12-20 WILLS

12-20-010 Definitions -

- (a) Will - Any statement or instrument in oral or written form which is intended by the person making it to control the distribution of that person's estate.
- (b) Estate - All property, personal or real, in which a person possesses any interest at the time of his death.
- (c) Testator - A person who makes or has made a will.

12-20-020 Persons Capable of Making a Will - Any person who is at least 18 years of age, who is of sound mind, and who

12-20-020 cont.

understands the significance and effect of the act of making a will, is capable of executing a valid will.

12-20-030 Requirements For Validity of Written Wills - To be valid and effective in the distribution of an estate, a written will must comply with the requirements set forth in this section. A written will shall:

- (a) Be executed by a person who may make a will, as described in 12-20-020;
- (b) Be in a permanent form and format which is not easily susceptible to alteration or erasure;
- (c) Be signed at the bottom of each page by the testator;
- (d) Be signed at the end by the testator, the act of signing and the testator's signature to be witnessed by two (2) persons of legal age who do not receive any benefits under the will;
- (e) Be accompanied by an affidavit which shall:
 - (1) Establish that the will was prepared by or at the request of the testator, was read and understood by the testator before its signing, was not executed as the result of force or undue influence, and accurately expresses the testator's desired disposition of his property.
 - (2) Be signed under oath by the testator, or be marked by him with his mark or thumbprint, which mark or thumbprint shall be witnessed under oath by two (2) additional persons.
 - (3) Establish that the testator declared to the

12-20-030 cont.

persons witnessing the execution of his will that the document executed was in fact his will, that it accurately reflected his intended disposition of his property and that the testator was not acting under duress, menace, fraud or undue influence.

- (4) Be signed under oath by the persons witnessing the testator's signature, attesting to the contents of subsection (3).

12-20-040 Holographic Wills -

- (a) Definition - A holographic will is a will written entirely by the testator in his normal and customary handwriting.
- (b) Validity of Holographic Wills - Notwithstanding any other provisions of this Title, a will written entirely in the normal and customary handwriting of the testator, and which is signed and dated by the testator, shall be valid to control the disposition of the first \$3,000 of personal property in the testator's estate.
- (c) Distribution of Property Not Conveyed by a Holographic Will - The distribution of personal property in the testator's estate in excess of the first \$3,000 in value and of any real property, shall be in accord with the provisions of this Title for intestate succession.

12-20-050 Oral Wills

- (a) Definition - An oral will is an oral statement by a

12-20-050 cont.

person which is intended by him to control the distribution of his estate.

(b) Requirements of Validity - Notwithstanding any other provision of this Title, an oral will shall be valid to control the distribution of the first \$3,000 of personal property in the testator's estate, provided that:

- (1) The oral will is witnessed by at least two (2) persons, at least one of whom will not benefit from the will; and
- (2) Within six (6) months of the date the will was made, each of the two (2) witnesses completes and signs under oath, and files with the Clerk of Court, a statement which: recites the circumstances of the making of the will; details the disposition of property under the will; states that the testator at the time of making the will appeared to be of sound mind and was not acting under undue influence, menace, duress or fraud; states the relationship of the witness to the testator, if any, and the benefit which the witness would receive under the will, if any.

In the event that the testator dies before the passage of the six (6) month period specified above, the statements of each witness shall be made within 21 days of the witnesses' receipt of notice or knowledge of the testator's death. Witnesses failing to do so, make

12-20-050 cont.

and file the necessary statements, shall be liable for the damages caused to any person by such failure.

- (c) Distribution of Property Not Conveyed by an Oral Will - The distribution of personal property in the testator's estate in excess of the first \$3,000 in value, and of any real property, shall be in accord with the provisions of this Title for intestate succession.

12-20-060 Recording and Filing of Wills -

- (a) Recording of Wills - Any will disposing of property over which the Tribal Court would have probate jurisdiction may be recorded with the Tribal Court. Recording shall be accomplished by providing to the Clerk of the Tribal Court the executed original of the will. Any will so recorded shall be presumed to be the last will of the testator, and this presumption shall be overcome only by a preponderance of evidence to the contrary. Any will so recorded shall remain the property of the testator and shall be returned to the testator upon his request. The contents of a recorded will shall remain strictly confidential, and shall not be revealed to any person except upon written authorization by the testator. Upon the death of the testator, a recorded will shall be filed according to the procedures of subsection (b) of this section.
- (b) Filing of Wills - Upon receipt of notice or knowledge of the death of a testator, any person who has in his possession the testator's will shall immediately file

12-20-060 cont.

such will with the Clerk of the Tribal Court. Any person who fails to file a will within 21 days of receipt of notice or knowledge of the testator's death shall be liable for the damages caused to any person by the failure to file.

12-20-070 Revocation of Wills - A will shall be revoked and rendered void and ineffective by any of the following actions by a testator:

- (a) The subsequent execution of a written will in accord with the requirements of 12-20-030;
- (b) The physical destruction of the will by any means, with the intention by the testator that the act of destruction revoke the will;
- (c) The subsequent execution of a written will or a holographic will, in accord with the provisions of this Title, after the making of an oral will;
- (d) For an oral will only, a subsequent oral statement, witnessed by at least two persons, in which the testator evidences beyond a reasonable doubt his intention to revoke his previously made oral will;
- (e) The subsequent marriage, birth of a child to, or divorce of a testator.

In the event that an oral will is revoked pursuant to subsection (d) of this section, each of the two witnesses shall file and with the Court Clerk an affidavit containing the information listed in 12-30-050 (b)(2), explaining the circumstance surrounding the revocation of the

12-20-070 cont.

oral will.

12-20-080 Interpretation of Effect of Wills - Every valid will shall be interpreted so as to achieve the intent of the testator, as expressed in the will. Every valid will shall be interpreted so as to dispose of all property in which the testator had any interest at the time of his death, including all property acquired after the making of the will, unless a contrary intent is specifically stated in the will.

12-30 SUCCESSION TO PROPERTY

12-30-010 Definitions -

- (a) Intestate Decedent - A person who, as of the time of his death, had not executed a valid will;
- (b) Succession to property - The scheme by which the property of a decedent is distributed;
- (c) Heirs - The persons who are entitled to receive any portion of the estate of an intestate decedent, according to the provisions of this Title.

12-30-020 Applicability - The provisions of sections 12-30-030 and 12-30-040 shall apply to distribution of all property within the jurisdiction of the Tribal Court as described in Section 12-10-010 of this Title.

12-30-030 Distribution of Community Property - All community property as defined in 9-20-020, in which a deceased person had at the time of his death, shall be distributed as follows:

- (a) One-half (1/2) of the total value of the community property in which a deceased person had an interest at the time of his death shall become the separate property

12-30-030 cont.

of the spouse of the deceased person; and

- (b) The remaining one-half (1/2) shall be a part of the estate of the deceased person, and shall be subject to distribution according to the provisions of this Title.

12-30-040 Order of Succession

- (a) If a person has executed a valid will as of the time of his death, his estate shall be distributed according to the provisions of his will, subject to the limitations imposed by Sections 12-30-040 and 12-30-050.
- (b) If a person has not as of the time of his death executed a valid will, or if the valid will does not dispose of the entire estate of a decedent, the estate or part thereof not disposed of by will shall be distributed as follows:
- (1) If the deceased was survived by a spouse and had no children at the time of death, the entire estate shall pass to the spouse of the deceased.
 - (2) If the deceased was survived by a spouse and had one child, one-half (1/2) of the estate shall pass to the spouse and one-half (1/2) shall pass to the child.
 - (3) If the deceased was survived by a spouse and had more than one child, one-third (1/3) of the estate shall pass to the spouse, and the remainder shall be divided equally among the children of the deceased.
 - (4) If the deceased was not survived by a spouse and

12-30-040 cont.

had one or more children, the entire estate shall pass to an only child, or shall be divided equally among multiple children.

- (5) If the deceased was not survived by a spouse and had no children, the entire estate shall be divided equally between the parents of the deceased, if both survive the deceased, or shall pass entirely to the surviving parent if only one parent survives the deceased.
- (6) If the deceased was not survived by a spouse, children or parents, the entire estate shall be divided equally between the grandparents of the deceased, if both survive the deceased, or shall pass entirely to the surviving grandparent if only one grandparent survives the deceased.
- (7) If the deceased is not survived by a spouse, or parents, and had no children, the entire estate shall be divided equally among the brothers and sisters of the deceased. Brothers and sisters having only one common parent with the deceased shall share in such division.
- (8) If the deceased is not survived by persons having any of the above relationships, the estate of the deceased shall escheat to the Tribe.

In all of the preceding provisions for distribution of an estate, the share of the estate to which a deceased heir would have been entitled shall be distributed among the

12-30-040 cont.

heirs of the deceased heir as if it had been a part of the estate of the deceased heir.

12-30-050 Heirship of Acknowledged and Unacknowledged Children -

(a) Acknowledged Children - Children not born of a valid marriage, parenthood of whom has been acknowledged in writing by a decedent, or with respect to whom paternity has been determined by a Court order, shall share in the parent's estate according to the provisions of Section 12-30-040.

(b) Unacknowledged Children - Children not born of a valid marriage, parenthood of whom has not been acknowledged in any manner by a deceased person, shall not share in the estate of that deceased person.

12-30-060 Omitted Children -

(a) If a testator fails to provide in his will for any of his children living at the time of execution of his will (or born or adopted after the execution of the will, if the will is not considered revoked by such later birth or adoption), the omitted child shall receive a share of the testator's estate equal to the amount he would have received if the testator had died intestate, unless:

(1) If appears from the will that the omission was intentional; or

(2) The testator had provided for the omitted child by gift or other transfer of property, and it is shown that it was the intent of the testator that such

12-30-060 cont.

gift or transfer be in lieu of a share of the testator's estate under the will.

- (b) If a testator, at the time of making his will, fails to provide for a child because of a mistaken belief that the child is dead, the child shall receive a share of the testator's estate equal to his intestate share.

12-30-070

Advancements - An advancement is a portion of a person's estate given before his death to a beneficiary under the person's will or to an intestate heir, with the clear intention that the property so given be considered part or all of the recipient's eventual share of the person's estate.

- (a) Any part of a decedent's estate given as an advancement by the decedent during his lifetime, to any person who would have been entitled to a share of the decedent's estate, shall be considered to be a part of the decedent's estate for purposes of administration. Any advancement so made shall be charged against the recipient's share of the estate.
- (b) If the advancement was larger than the recipient's share of the estate, refund of the excess shall not be required, but the recipient shall not take any other part of the decedent's estate.
- (c) If the advancement was smaller than the recipient's share of the estate, the recipient shall be entitled to an additional portion of the estate which, when combined

12-30-070 cont.

with the value of the advancement, shall equal his share of the estate.

(d) The value of an advancement shall be determined as of the date it was received.

12-40

SIMULTANEOUS DEATH

12-40-010

General Rule - Where the title to property or the devolution thereof depends upon priority of death of the owners or interest holders thereof, and there is no sufficient evidence that those persons have died other than simultaneously, the property or interest therein of each such person shall be disposed of as if he had survived all other owners or interest holders.

12-40-020

Succession in Case of Simultaneous Death; Community Property -

Where a husband and wife have died leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half (1/2) of all of the community property shall pass as if the husband had survived and as if that one-half (1/2) were his separate property, and the other half shall pass as if the wife had survived and as if that one-half (1/2) were her separate property.

12-40-030

Succession In Case of Simultaneous Death; Property Held

In Joint Tenancy or Tenancy by the Entirety - Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half (1/2) as if one had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed

12-40-030 cont.

shall be in the proportion that one bears to the whole number of joint tenants.

12-40-040 Beneficiaries of Person's Disposition of Property - If succession to any interest in property is dependent upon the potential successor's survival of some other person(s) and the potential successor and other person(s) die under circumstances in which there is no sufficient evidence that the potential successor and the other person(s) died otherwise than simultaneously:

- (a) If the potential successor was the sole designated beneficiary, the beneficiary shall be deemed not to have survived.
- (b) If the potential successor was one of two or more alternate or successive beneficiaries, the interest in property shall be divided into as many shares as there are alternate or successive beneficiaries and each share shall be distributed to the respective heirs of each beneficiary as if that beneficiary had survived.

12-50

TEMPORARY ADMINISTRATION OF AN ESTATE

12-50-010

Purpose of Appointment of Temporary Administrator - A temporary administrator shall be appointed if necessary to protect, preserve and manage the estate of a deceased person, until such time as an Administrator is appointed pursuant to 12-60 of this Title.

12-50-020

Application -

(a) An application for appointment of a temporary administrator, in a form approved by the Tribal Council, shall be

12-50-020 cont.

filed with the Clerk of the Court. An application may be filed by any person named as a beneficiary in the will of a deceased, by any heir of an intestate decedent, or by any person who has a claim against the estate of the deceased.

(b) Contents - An application shall contain the following information:

- (1) The name and date of death of the decedent;
- (2) Whether the decedent had executed a will;
- (3) The facts and circumstances which necessitate appointment of a temporary administrator;
- (4) The name and address of the person submitting the petition;
- (5) The interest of the petitioner in the estate of the deceased; and
- (6) The names and addresses of the other beneficiaries under the will or other heirs of an intestate decedent, if known to the petitioner.

(c) The application shall be signed, under oath, by the applicant.

12-50-030 Notice of Application and Appointment - Notice of application for appointment and notice of a appointment of a temporary administrator shall be posted at the office of the Clerk of the Tribal Court, and shall be mailed to all known beneficiaries or heirs of the estate.

12-50-040 Procedure -

(a) Pre-appointment Protective Orders - Upon receipt of an

12-50-040 cont.

application, and before appointment of a temporary administrator, the court may immediately issue any orders necessary to preserve and protect the estate of the deceased.

(b) Persons Eligible For Appointment - The court may appoint the applicant as temporary administrator, if the applicant is:

- (1) The sole heir of an intestate deceased, or is intitled under this Code to 50% or more of the estate of an intestate deceased; or
- (2) The sole beneficiary named in the will of the deceased, or the beneficiary entitled under the will of the deceased to more than 50% of the estate of the deceased.

If the applicant is not eligible to be appointed temporary administrator, the court shall appoint as temporary administrator the Clerk of the Court or a person designated by the Tribal Court to fulfill this function.

Such a person may, in the discretion of the court, be appointed temporary administrator of any estate.

(c) Duration of Appointment - A temporary administrator shall be appointed to serve only until an administrator is appointed pursuant to 12-60.

12-50-050

Duties and Powers - A temporary administrator shall have the duty and responsibility to and shall be empowered to take those actions necessary to preserve and protect the estate of the deceased until an administrator is appointed

12-50-050 cont.

pursuant to 12-60. The court may, by order, limit and define the extent of power of a temporary administrator.

12-50-060 Bond of Temporary Administrator - When appointing a temporary administrator, the court may require that administrator post bond, in an amount specified by the court, to assure faithful performance of the duties of the administrator.

12-50-070 Report and Accounting of Temporary Administrator; Release - Upon the appointment of an administrator, the temporary administrator shall render to the court a report of actions taken by him in management of the estate and an accounting of the estate. Following receipt of such report and an accounting, the court shall issue to the temporary administrator a release which shall relieve him of further responsibility for management of the estate and further liability arising therefrom. Such release shall not be a bar to an action filed within two (2) years by any person to recover damages for the failure of such temporary administrator to exercise due care in the management of the estate before the granting of such release.

12-60 ADMINISTRATOR OF ESTATES

12-60-010 Filing of Will or Memorandum of Oral Will - Following the death of a testator, the original will of the testator shall be filed with the Clerk of the Court in accord with subsection 12-30-060 (b). If a decedent made an oral will, the statements of the witnesses to such oral will shall be made and filed with the Clerk of the Court in accord with

12-60-010 cont.

subsection 12-30-050 (b)(2). The person filing the will or statement of witnesses to an oral will shall inform the Clerk of the Court of the date of the death of the decedent.

12-60-020

Filing of the Petition For Determination of Heirs of Intestate Decedent - Following the intestate death of a person, any person may file a petition for the determination of the heirs of the decedent. Such a petition shall contain the following information:

- (a) The name and date of death of the decedent;
- (b) The heirs at law of the decedent, if known;
- (c) The living relatives of the decedent, and living decedents of deceased relatives, by blood or marriage;
- (d) The name, address, and relationship to the decedent of the person filing the petition.

12-60-030

Appointment of Administrator of Estate -

(a) Notice of administration -

- (1) Giving of Notice - Within 14 days after filing of a will of a decedent, or a petition for determination of heirs, the Clerk of the Court shall post at the office of the Tribal Council and at such other places as the Tribal Council may designate, notice that the administration of the estate of the named deceased will be commenced. Such notice may also be published in any newspaper of general circulation within the vicinity of the reservation, which may be designated by resolution of the Tribal

12-60-030 cont.

Council. Such notice shall be posted and/or published for at least three (3) consecutive weeks. Individual notice shall be sent by registered mail to each known heir of a decedent and beneficiary under a will.

- (2) Contents of Notice - The notice posted, published, or mailed shall contain the following information:
- (A) The name and date of the death of the deceased.
 - (B) The existence or non-existence of a will.
 - (C) The names of all beneficiaries under any will.
 - (D) The names of intestate heirs of the deceased, if known.
 - (E) Whether a temporary administrator has been appointed and the identity of such administrator; and
 - (F) The statement that applications for administrator of the estate will be received by the Clerk of the Court until a specified date no sooner than 30 days after the first date of posting or publishing of the notice.

- (b) Application for Administration - Application for administration may be filed with the Clerk of the Court by any heir of a deceased, any beneficiary under the will of a deceased, or any creditor of the deceased. Application shall be made on a form provided by the Clerk of the Court. Application shall be made under oath and shall contain the following information:

12-60-030 cont.

- (1) Name and address of the applicant.
- (2) Applicant's interest under the will of the deceased.
- (3) The amount of any debts owed to the applicant by the deceased.

The person named administrator of a decedent's estate in the will of a decedent shall submit in his name an application for appointment as administrator.

(c) Appointment of Administrator -

- (1) Hearing Date - On a date no sooner than 28 days after the first posting or publication of the notice specified in 4-60-030 (a), the court shall hold a hearing to designate an administrator.
- (2) Priority of Appointment - The court shall adhere to the following priorities of appointment, and shall appoint the first designated person who is capable and competent to serve for:
 - (A) Testate Decedent - the administrator named in the will; the beneficiary receiving the largest share under the will; other beneficiaries under the will, in order of decreasing claims.
 - (B) Intestate Decedents - the spouse of the deceased; children of the deceased, in order of decreasing age (except that a minor child shall not be approved), the mother and father of the deceased order of decreasing age;

12-60-030 cont.

siblings of the deceased, in order of decreasing age; claimed creditors of the deceased, in order of decreasing claims.

(d) Incompetent Person as Administrator - Should no designated person be capable and competent to serve, the court shall appoint the person designated by the Tribal Council or some other proper person to fulfill such a function.

(1) Hearing Procedure - All persons who have filed an application may appear at the hearing and present evidence as to the priority of their applications, and their capability and competence to serve. The court shall enter an order designating as administrator the highest priority applicant who is capable and competent to serve.

12-60-040 Powers and Duties of Administrator - The administrator shall have the power and responsibilities to take all actions necessary to protect, preserve and manage the estate of the deceased; to prepare the estate for distribution; to receive, consider and accept or reject claims against the estate; and to submit to the court a final report and proposed Order of Distribution of the estate.

12-60-050 Bond; Expenses and Fees -

(a) The administrator shall be required to post a bond with the Clerk of the Court, in an amount at least the estimated value of the estate as of the date of the administrator's appointment; however, this requirement

12-60-050 cont.

of bond may be waived in the discretion of the court.

- (b) The administrator shall be entitled to receive from the estate those expenses and fees reasonably incurred in the fulfillment of his duties and responsibilities as administrator.

12-60-060 Claims Against an Estate -

- (a) Notice of Filing Period - Within fourteen (14) days of his appointment the administrator shall cause to be posted and published in the manner specified in 12-60-030 (a)(1), notice that claims against the estate of the named deceased will be accepted by him for a period of sixty (60) days from the first posting and publication of notice. Such notice shall specify a mailing address to which claims may be directed and shall state the last date upon which claims will be received.
- (b) Receipt and Disposition of Claims - Notice to Heirs - The administrator shall receive and consider all timely filed claims against the estate. Within 2 weeks of the receipt each claim shall be declared valid or invalid and the claimant shall be so notified in writing. Within 2 weeks after the end of the period for receipt of claims, the administrator shall notify all beneficiaries under the decedent's will or the presumptive heirs of an intestate decedent, of the nature and disposition of all claims against the estate.

12-60-060 cont.

- (c) Appeal of Disposition of Claims - Within 2 weeks of receipt of notice that a claim has been denied, a claimant may file with the court and the administrator a notice of appeal of the denial of a claim. Within 2 weeks of receipt of notice by a beneficiary or presumptive heir of the claim against an estate, such person may file with the court and the administrator an appeal of the allowance of any claim.

12-60-070

Distribution of Estate -

- (a) Hearing - No sooner than 4 weeks after the end of the period for receipt of claims, a hearing shall be held to distribute the estate of the deceased. At the hearing all timely filed appeals shall be considered and decided by the court.
- (1) The validity of a testate decedent's will shall be established;
 - (2) The heirs of an intestate decedent shall be determined;
 - (3) The report and proposed fees of the administrator shall be reviewed and approved or disapproved;
 - (4) An order shall be entered distributing the estate; and
 - (5) The administrator shall be discharged.
- (b) Priorities in Distribution of an Estate - The court shall observe the following priorities in the distribution of an estate:
- (1) Expenses and fees of administrator.

12-60-070 cont.

- (2) Approved claims against the estate, expenses of the deceased's last illness and funeral being given priority over other claims.
 - (3) Specific bequests.
 - (4) General bequests.
 - (5) Residual bequests.
 - (6) Distribution to intestate heirs.
- (c) Order of Distribution - At the conclusion of the hearing, the court shall enter an order of distribution which shall specify the manner of distribution of the decedent's estate and shall serve to convey to the appropriate persons their shares of the estate.
- (d) Report and Discharge of Administrator - At the conclusion of the hearing, the court shall receive the report of the administrator, and may enter an order releasing the administrator. Such an order shall relieve the administrator of further responsibility for the management of the estate, and further liability arising therefrom. Such a release shall not be a bar to an action filed within 2 years by any person to recover damages for the failure of such administrator to exercise due care in the management of the estate before the grantings of such release.

12-70

INFORMAL ADMINISTRATION OF SMALL ESTATES

12-70-010

Definitions -

- (a) Successor - Any person, other than a creditor, who

12-70-010 cont.

is entitled to the property of a decedent under the decedent's will or according to the provisions of chapter 12-30 of this title.

- (b) Creditor - Any person to whom a deceased was indebted at the time of his death, or to whom the estate of a deceased would be indebted because of the expenses of the last illness or funeral of the decedent.

12-70-020 Applicability - The provisions of this chapter 12-70 shall be applied only to the distribution of estates:

- (a) which do not exceed \$3,000.00 in value; and
(b) which are to be distributed among no more than four
(4) beneficiaries or intestate heirs.

12-70-030 Procedure - An estate of which this chapter is applicable as determined by Section 12-70-020, may be administered in accord with the following procedure:

- (a) No sooner than ten (10) days after the date of the death of decedent; the spouse, an apparent intestate heir, or a beneficiary under the will of a decedent may file with the Clerk of the Court a petition for Informal Administration. The petition may be on a form provided by the Clerk of the Tribal Court, and shall contain the information specified in Section 12-70-040.
- (b) Within ten (10) days of the filing of a petition for Informal Administration, notice of the filing of the petition shall be provided in the manner and to the parties specified in Section 12-70-050.

12-70-030 cont.

(c) Within thirty (30) days of the posting of notice, as required by Section 12-70-050, all creditors of the decedent shall file with the Clerk of the Court their claims against the estate of the decedent. Such filing shall comply with the requirement of Section 12-70-060.

(d) No sooner than forty (40) days after the filing of a petition for Informal Administration, successors to the estate of the deceased may claim assets of the estate by presenting Successor's Affidavits to the holders of such assets. All such Successor's Affidavits shall comply with and be presented in accordance with requirements of Section 12-70-070. Holders of assets of a decedent's estate shall convey such assets to a claiming successor in accordance with Section 12-70-070 and shall be discharged and released according to the provisions of that section.

12-70-040

Petition For Informal Administration - No sooner than ten (10) days after the death of a decedent, a petition for Informal Administration of an estate may be filed by the spouse, an apparent intestate heir, or a beneficiary under the will of a deceased. Such a petition shall be filed with the Clerk of the Court, and may be filed on a form provided by the Clerk. Every petition shall contain or incorporate the following:

- (a) The name of the decedent;
- (b) The date and place of death;

12-70-030 cont.

- (c) Within thirty (30) days of the posting of notice, as required by Section 12-70-050, all creditors of the decedent shall file with the Clerk of the Court their claims against the estate of the decedent. Such filing shall comply with the requirement of Section 12-70-060.
- (d) No sooner than forty (40) days after the filing of a petition for Informal Administration, successors to the estate of the deceased may claim assets of the estate by presenting Successor's Affidavits to the holders of such assets. All such Successor's Affidavits shall comply with and be presented in accordance with requirements of Section 12-70-070. Holders of assets of a decedent's estate shall convey such assets to a claiming successor in accordance with Section 12-70-070 and shall be discharged and released according to the provisions of that section.

12-70-040

Petition For Informal Administration - No sooner than ten (10) days after the death of a decedent, a petition for Informal Administration of an estate may be filed by the spouse, an apparent intestate heir, or a beneficiary under the will of a deceased. Such a petition shall be filed with the Clerk of the Court, and may be filed on a form provided by the Clerk. Every petition shall contain or incorporate the following:

- (a) The name of the decedent;
- (b) The date and place of death;

12-70-040 cont.

- (c) A certified copy of the decedent's death certificate;
- (d) The name and address of the Petitioner and his or her relationship to the deceased;
- (e) An inventory of known assets of the estate;
- (f) The original copy of the will of the deceased, if any, or the statements of witnesses to an oral will;
- (g) A list of the known surviving relatives of the deceased;
- (h) A list of the apparent intestate heirs or beneficiaries under a will;
- (i) A list of the nature and amount of known outstanding debts of the deceased or of his estate, together with the names and addresses of creditors; and
- (j) A statement as to how the expenses of the deceased's last illness and funeral have been or will be paid.

If any documents required to be included in the petition have been filed with or are in the possession of the Court Clerk, the Clerk shall, at the time of filing of the petition, attach to and incorporate such documents in the petition.

12-70-050

Notice of Petition For Informal Administration -

- (a) Within ten (10) days of the filing of a petition for Informal Administration, notice of filing of the petition shall be given in the manner and to the persons specified in this section. Such notice shall advise that:
 - (1) A petition for Informal Administration of the decedent's estate has been filed on a specified

12-70-050 cont.

date;

- (2) The petition may be inspected at the office of the Court Clerk;
- (3) Creditors' claims must be filed within thirty (30) days of the date of posting of notice, which date must be specified; and
- (4) The distribution of the assets of the decedent's estate may be commenced pursuant to this chapter no sooner than forty (40) days after the date of filing of the petition.

Forms provided by the Court Clerk may be used to give the required notice.

- (b) Notice shall be given in the following manner, to the person specified:
 - (1) By posting in the office of the Court Clerk, and at such other locations as the Tribal Council may by resolution direct;
 - (2) By registered mail, mailed no later than the date of posting of notice, to all known intestate heirs of the deceased or beneficiaries under the will of the deceased.
 - (3) By registered mail, mailed no later than the date of posting of notice or by personal service to all known creditors of the deceased; or
 - (4) By publication of the notice in a newspaper of general circulation on or in the area of the reservation, for a least two consecutive weeks.

12-70-050 cont.

- (c) The Court Clerk shall perform the acts necessary to give notice as required in (b) of this section.
- (d) Payment for expenses incurred in the giving of notice pursuant to this section shall be advanced by the Court Clerk from the Tribal Court Fund. Such funds, when advanced, shall become a debt of the estate, shall take priority over all other debts of the estate, and shall be first paid from assets of the estate.

12-70-060

Claims of Creditors -

- (a) Time and Place For Filing of Claims - All claims of creditors of a decedent or of a decedent's estate shall be filed with the Tribal Court Clerk within thirty (30) days of the date of posting of notice required by Section 12-70-050.
- (b) Contents of Filed Claims - All claims of creditors shall contain a complete statement of the nature and exact amount of the claimed debt, the date when the debt was incurred, and the names and addresses of any co-debtors or co-signers. Sufficient information shall be provided by a claiming creditor to permit beneficiaries or intestate heirs to determine the validity of the claimed debt.
- (c) Effect of Filing of Claim - A timely filed and valid creditor's claim shall have priority over claims by successors to the assets of a decedent's estate. Among claims of creditors, priority shall be deter-

12-70-060 cont.

mined by the order of filing of claims, earliest filed claims being given first priority. If any timely filed and valid creditor's claim remains unsatisfied at the time that a successor's affidavit is filed claiming property of a decedent's estate, the claiming successor shall be personally liable for all unsatisfied creditors claims, or the appropriate portion thereof, in accord with the provisions of Section 12-70-070 (e).

- (d) Release of Creditor's Claims - It is the duty of every creditor who has filed a claim pursuant to this section to file a release of claim when that claim is satisfied. Such a release shall be filed with the Tribal Court Clerk within three (3) days of the satisfaction of a claim from the assets of the estate, by a claiming successor, or otherwise. Any creditor who fails to timely file a release as required by this section shall be liable to each and every person injured by such failure, for such person's actual damages and for an additional award of punitive damages of not less than \$25 nor more than \$100. The amount of such punitive damages shall be determined by the tribal judge hearing the action to collect such damages, taking into consideration the actual damages incurred and the willfulness of the failure to file a release.
- (e) Contest of Claim - If any creditor or claiming

12-70-060 cont.

successor of a decedent questions the validity of any filed claim, such person may file with the Tribal Court Clerk a Motion to Require Formal Administration. If the dispute as to the validity of a claim cannot be resolved by negotiation within one week, in the manner provided in Section 12-70-080 (a), formal administration shall be instituted in accord with that section.

12-70-070 Collection and Distribution of Estate Assets by Successor's Affidavit -

(a) Procedure - No sooner than forty (40) days after the filing of a petition for Informal Administration, persons claiming assets of decedent's estate may present to the holder of any such assets an affidavit executed in compliance with this section. Affidavits may be presented by persons named as beneficiaries in a decedent's will, or by the intestate successors of a decedent who died intestate. Upon receipt of a successor's affidavit, the holder of any property of a decedent shall convey such property to the person presenting the affidavit, and shall obtain a signed receipt for the property. Transfer agents for any security shall change registered ownership of the security upon receipt of an affidavit. The holder of any such property shall then submit the successor's affidavit and receipt to the Tribal Court Clerk; the Court Clerk shall file the affidavit and original

12-70-070 cont.

receipt, and shall return to the property holder a copy of the receipt noted to indicate the fact and date of its filing with the court.

- (b) Contents of Successor's Affidavit - A successor's affidavit submitted to secure the transfer of any property of a decedent's estate shall contain the following:
- (1) The name and address of the claimant;
 - (2) The relationship of the claimant to the decedent;
 - (3) The name of decedent, date of death, and residence of decedent at time of death;
 - (4) A statement that all debts of the decedent, including funeral and burial expenses, have been paid or provided for, and that no claim of a creditor filed with the Clerk of the Court remains unpaid or not provided for;
 - (5) A statement that the total value of the decedent's estate does not exceed \$3,000, and that the estate is otherwise eligible for informal administration; and
 - (6) A statement that the claiming successor has mailed to all other successors of the deceased notice of his intention to claim the assets, that at least ten (10) days have elapsed since such mailing, and that the claiming successor is personally or by written authority of all other successors, entitled to full payment or delivery of the property.

12-70-070 cont.

- (c) Discharge and Release of Holder of Property - Any holder of property of a decedent who releases such property upon receipt of an affidavit pursuant to this section, who receives a receipt for such property from the claiming successor, and who files such affidavit and receipt in accord with this section, shall be discharged and released to the same extent as if he had dealt with the administrator of the decedent's estate. A holder of property is not required to inquire into the accuracy of any statements in a successor's affidavit.
- (d) Conflicting Affidavits - The holder of property of a decedent may release such property to the first successor to present an affidavit. If conflicting affidavits are received, a holder shall either transfer the property to the first claiming successor or to the Court Clerk. Claiming successors who dispute the right of another claiming successor to any property may file a motion to require formal administration, as provided in Section 12-70-080.
- (e) Liability of Claiming Successor - Any person to whom property is transferred pursuant to a successor's affidavit shall be answerable and accountable for such property to any administrator of the decedent's estate or to any person having a superior claim to such property. If any property of a decedent is claimed by a successor by means of a successor's affidavit,

12-70-070 cont.

while an obligation of the decedent's estate to any creditor remains unsatisfied, the successor claiming such property shall be personally liable to the unsatisfied creditor for that portion of the obligation which equals the proportion of the claimed property's value of the total estate.

12-70-080 Termination of Informal Administration and Initiation of Formal Administration -

(a) Procedure - Informal Administration of an estate may be terminated, and formal administration commenced, upon the granting by the Tribal Court of a motion to require formal administration. A motion to require formal administration may be made by:

- (1) Any creditor of an estate or by any successor to an estate, if such person seeks to have determined the validity of any claim filed against the estate; or
- (2) Any successor to an estate, if such person seeks to have determined the validity of the claim to an asset of the estate by another successor.

A motion to require formal administration shall be made in writing, in a form prescribed by the Tribal Court. The motion shall: identify the party making the motion; state the basis upon which the motion is made; and concisely state the facts upon which the motion is based. All motions filed shall be considered within fourteen (14) days by the Tribal Judge, who

12-70-080 cont.

may recommend that the parties involved attempt to negotiate the dispute. If such negotiation proves unsuccessful within fourteen (14) days, or if the Tribal Judge considers negotiation inappropriate, the motion shall be granted, and an order shall be entered terminating informal administration and initiating formal administration in accord with Chapters 12-50 and/or 12-60.

- (b) Reports by Creditors and Claiming Successors - Upon receipt of notice of termination of informal administration, all creditors of the estate and all claiming successors shall advise the Tribal Court Clerk, in writing, of the status of their claims against the estate and of the extent of any estate assets they have claimed pursuant to this Chapter 12-70.
- (c) Formal Administration of Estate After Entry of Order - Following entry of an order terminating informal administration of an estate, administration of the estate shall proceed according to the provisions of Chapters 12-50 and 12-60. The Tribal Court may enter orders directing all creditors or claiming successors to take or refrain from taking actions which, in the discretion of the court, will preserve the estate, facilitate its administration, and protect the interests of creditor and claiming successor.