



**BOIS FORTE BAND OF CHIPPEWA  
TRIBAL CODE**

**TITLE 4  
RULES FOR CRIMINAL PROCEEDINGS**

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**TABLE OF CONTENTS**

Title-Chapter-Section.	Page
CHAPTER 1 – INITIATION OF PROCEEDINGS	1
4.1.1. Initiation of Proceedings.	1
4.1.2. Citation.	1
4.1.3. Complaint.	1
CHAPTER 2 – ARREST, ARREST WARRANT, OR SUMMONS	2
4.2.1. Arrest - Warrant or Summons.	2
4.2.2. Arrest Warrants.	2
4.2.3. Arrest.	3
4.2.4. Arrest without Warrants.	3
4.2.5. Summons in Lieu of Warrant.	3
CHAPTER 3 – SEARCH AND SEIZURE	4
4.3.1. Search Warrants.	4
4.3.2. Search Without a Warrant.	4
4.3.3. Disposition of Seized Property.	5
CHAPTER 4 – ARRAIGNMENT, PLEA, AND RELEASE	5
4.4.1. Arraignment.	5
4.4.2. Receipt of Plea at Arraignment.	6
4.4.3. Not Guilty Plea.	6
4.4.4. Guilty Plea.	6
4.4.5. No Contest Plea.	6
4.4.6. Bail - Release Prior to Trial.	7
4.4.7. Release from Custody upon Receipt of Bail.	7
4.4.8. Forfeiture of Bail.	7
4.4.9. Bail, Release by Police Officer.	7
4.4.10. Withdrawal of Guilty Plea.	8
CHAPTER 5 – TRIAL	8

4.5.1. Trial.	8
4.5.2. Jury Trial.	8
4.5.3. Witnesses.	9
4.5.4. Presence of Defendant.	10
4.5.5. Rights of the Defendant.	10
CHAPTER 6 – POST-CONVICTION PROCEDURES	11
4.6.1. Writ of Habeas Corpus.	11
CHAPTER 7 – GENERAL PROVISIONS	13
4.7.1. Motions.	13
4.7.2. Evidence.	13
4.7.3. Harmless Error and Plain Error.	13
4.7.4. Regulation of Conduct in the Court Room.	14
4.7.5. Order of Trial Procedure.	14
4.7.6. Presumption of Innocence.	14
4.7.7. Joint Defendants.	15
4.7.8. Discharge of Juror; New Trial.	15
4.7.9. Judgment of Acquittal.	15
4.7.10. Verdict.	15
4.7.11. Execution of Judgment.	15
4.7.12. Imprisonment for Fine.	16
4.7.13. Suspension of Sentence.	16
4.7.14. Probation.	16
4.7.15. Parole.	16
4.7.16. New Trial.	17
4.7.17. Appeal of Conviction.	17
4.7.18. Extradition.	17
4.7.19. Rules of Court.	19
4.7.20. Exclusion.	19
4.7.21. Direct Contempt of Court.	20
4.7.22. Constructive Contempt of Court.	20
4.7.23 – 4.7.86. Reserved for future use.	21



## BOIS FORTE TRIBAL CODE

### PREAMBLE

The purpose of the Bois Forte Tribal Code (BFTC) is to, whenever possible, restore Minobimaadiziwin (the Good Path of Life) to all persons it serves by providing a progressive, non-judgmental path to health and forgiveness, in accordance with the community's traditional practices and values. First and foremost, the Bois Forte Tribal Court shall be guided by the seven defining Anishinabe teachings or core values:

1. *Nibwaakaawin* — Wisdom;
2. *Zaagi'idiwin* — Love;
3. *Minaadendamowin* — Respect;
4. *Zoongide'ewin* — Bravery;
5. *Gwayakwaadiziwin* — Honesty;
6. *Dabaadendiziwin* — Humility; and
7. *Debwewin* — Truth.

*Accordingly, the Bois Forte Tribal Court's focus in all decisions shall be on the impact it will have seven generations in the future.* If necessary, the presiding Judge may consult a community spiritual leader or elder for guidance when endeavoring to adhere to these principles and the Bois Forte Reservation Council may enact a resolution designating appropriate spiritual leaders or elders available for such consultation.

**TITLE 4  
RULES FOR CRIMINAL PROCEEDINGS**

**CHAPTER 1 – INITIATION OF PROCEEDINGS**

**4.1.1. Initiation of Proceedings.**

All prosecutions for alleged crimes and offenses under the laws and ordinances of the Bois Forte Band of Chippewa shall be initiated by serving either a citation or a complaint upon the defendant and filing the same with the Clerk of the Bois Forte Tribal Court. All criminal proceedings shall be recorded by audio or visual recording.

**4.1.2. Citation.**

- (a) A citation, in a form approved by the Court, may be issued by a duly authorized law enforcement officer and shall contain, at a minimum, the name, address, age and physical description of the defendant, the time and place of the alleged crime(s) or offense(s), reference to the section(s) of the Bois Forte Code or other applicable Band ordinance(s) alleged to have been violated and a brief description of the act(s).
- (b) The citation shall also contain a conspicuous notice to the defendant to appear before the Bois Forte Tribal Court at a given time and date for the purpose of answering to the charge.
- (c) The officer issuing the citation shall sign and date the same, swearing that the person named as a defendant committed the crime or offense charged.

**4.1.3. Complaint.**

- (a) **Plaintiff.** The Bois Forte Band of Chippewa shall always be the sole plaintiff named in a criminal Complaint.
- (b) **Defendant May Request Formal Complaint.** Any defendant charged with a crime shall be served with a written citation or complaint that notifies the defendant of those charges. Any defendant charged with a crime for which incarceration may be imposed upon conviction may request, at the time of arraignment, that a formal complaint be prepared, served, and filed prior to entering a plea.
- (c) **Contents of a Complaint.** Criminal Complaints shall be in a form approved by the Court and shall contain, at a minimum, the name, address and description of the defendant and the name of the complainant, the time and place of the alleged crime(s), reference to the section(s) of the Bois Forte Code or other applicable Band ordinance(s) alleged to have been violated, the maximum penalty which may be imposed upon conviction and a factual description of the act(s) alleged to have occurred. An affidavit of probable cause stating the basis for the Complainant's belief that the crime(s) occurred, that the defendant committed the crime(s) alleged and that the defendant is

subject to the personal jurisdiction of the Bois Forte Tribal Court must be included.

- (d) **Complainant.** The complainant may be the victim of the alleged crime(s), a law enforcement officer who investigated the alleged crime(s), or the law enforcement officer acting in a supervisory capacity over such other officer(s).
- (e) **Duties of the Band Prosecutor.** All criminal citations and complaints shall be prepared by or under the supervision of the Band's prosecutor who shall be solely responsible for determining if probable cause does exist to proceed with prosecution prior to any subsequent ruling by the Court. The prosecutor shall also have sole discretion to request that a suitable law enforcement officer be the Complainant in lieu of the alleged victim of the crime(s). Further, the prosecutor shall have sole discretion to later move the Court on behalf of the Bois Forte Band of Chippewa to dismiss, continue for dismissal, suspend, reduce, or substitute a criminal charge whenever the prosecutor believes that the available evidence is insufficient to convict or that the interests of justice so require. A prosecutor who does not faithfully discharge his/her duties may be relieved or replaced at any time by the Bois Forte Reservation Tribal Council.

## **CHAPTER 2 – ARREST, ARREST WARRANT, OR SUMMONS**

### **4.2.1. Arrest - Warrant or Summons.**

If the complaint, or the complaint together with other sworn statements, is sufficient to establish probable cause to believe that an offense had been committed by the person charged, the court shall issue a warrant instructing the police to arrest the named or otherwise described subjects or, in lieu thereof, the court shall issue a summons commanding the suspect(s) to appear before the court at a specified time and place to answer the charge. A summons shall be issued where the nature of the offense is such that in the discretion of the court arrest is not deemed essential, or where the court has reasonable grounds to believe the suspect(s) will appear upon summons.

### **4.2.2. Arrest Warrants.**

- (a) **Issuance.** Each judge and magistrate of the Tribal Court shall have authority to issue warrants to arrest, and arrest warrants shall be issued only upon a showing of probable cause in the complaint, or the complaint together with other sworn statements. The tribal judge or magistrate, may examine the complaining witness under oath to ascertain his knowledge of the facts alleged in the complaint. The tribal judge or magistrate may examine the complaining witness under oath to ascertain his knowledge of the facts alleged in the complaint. The tribal judge or magistrate shall deny the issuance of a warrant if he finds that there is not probable cause to believe that the named suspect committed the offense charged.
- (b) **Contents.** The arrest warrant shall contain the following information:
  - (1) The name or description and address, if known, of the person to be arrested;

- (2) The date the warrant is issued;
- (3) The description of the offense charged; and
- (4) The signature of the issuing judge or magistrate.

#### **4.2.3. Arrest.**

- (a) **Definition.** Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.
- (b) **When an Arrest can be Made.** No tribal law enforcement officer shall arrest any person for a criminal offense under the Tribal Code or otherwise take a person into custody unless:
  - (1) The officer shall have a proper warrant commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued;
  - (2) The offense shall occur in his presence;
  - (3) The officer shall have probable cause to believe that the person arrested has committed an offense; or
  - (4) The person may be taken into custody pursuant to the provisions of 4.7.18.
- (c) **Notification of Rights at the Time of Arrest.** Upon arrest the subject shall be advised of the following rights:
  - (1) That he or she has the right to remain silent;
  - (2) That any statements made by him or her may be used in court; and
  - (3) That he or she has the right to obtain counsel which may be appointed for him or her if he or she is charged with a crime that may result in a sentence that exceeds one year and unable to afford an attorney.

#### **4.2.4. Arrest without Warrants.**

When an individual has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause existed for the arrest, and in no instance shall a complaint be filed later than at the time of arraignment.

#### **4.2.5. Summons in Lieu of Warrant.**

**Issuance.** When otherwise authorized to arrest a suspect a police officer or authorizing

judge or magistrate may, in place of a warrant, issue a summons commanding the suspect to appear before the Tribal Court at a stated time and place to answer the charge. If a person fails to appear in response to a summons, a warrant for his arrest shall be issued.

## CHAPTER 3 – SEARCH AND SEIZURE

### 4.3.1. Search Warrants.

- (a) **Generally.** A search warrant is a written order, signed by a tribal judge or magistrate, and directed to a law enforcement officer ordering him to conduct a search and to seize items or property specified in the warrant. A warrant shall describe with reasonable particularity the property or place to be searched and any items to be seized and the time of day when the warrant may be executed.
- (b) **Issuance.** Every tribal court judge and, in the absence of the tribal judge, the magistrates, shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the court.
- (c) **Requisites for Issuance.** A warrant of search or seizure shall be issued by a neutral and detached judicial officer upon a finding of probable cause that a search will discover: stolen, embezzled, or contraband property; property which has been or is being used to commit a criminal offense; or property which constitutes evidence of criminal offense. Such probable cause shall be supported by a signed, written, and sworn statement of a police officer based upon his own knowledge or upon proven reliable information. A warrant may provide for its execution without announcement of authority and purpose if the application for the warrant sets forth exigent circumstances showing that announcement before entry will result in destruction of evidence or danger to the officers.

(Resolution 98-2004; March 22, 2004)

- (d) **Execution and Return.** Warrants of search and seizure shall only be executed by law enforcement officers. The executing officer shall return the warrant to the tribal court within the time limit shown on the face of the warrant, which in no case shall be longer than five (5) days from the date of issuance. Warrants not returned within such time limits shall be void.

### 4.3.2. Search Without a Warrant.

No police officer shall conduct any search without a valid warrant except:

- (a) Incident to making a lawful arrest, and then only to the extent necessary to prevent the suspect from destroying evidence, and only of areas within the suspect's immediate reach.
- (b) With the knowing voluntary consent of the person being searched, or if the search is of

a dwelling, with the knowing consent of the person affected or of someone authorized by that party to control access to the place or things searched.

- (c) When he has probable cause to believe that the person searched may be armed and dangerous, and then only to the extent necessary to detect the presence of a weapon.
- (d) When the search is of a motor vehicle capable of being driven away before a warrant can be obtained, if the officer has probable cause to believe that it contains contraband, stolen or embezzled property, or other criminally related objects.

#### **4.3.3. Disposition of Seized Property.**

- (a) **Inventory.** The police shall make an inventory of all property seized by warrant or otherwise, as soon as practicable after seizure, and an acknowledged copy of such inventory shall be given to the person from whose custody the property was taken, or if no person is present, by leaving a copy of the warrant and inventory at the place where the property was seized. Property shall be stored so as to prevent loss or unreasonable deterioration.
- (b) **Hearing.** A hearing shall be held by the court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is contraband or is to be used as evidence in a pending case. Unless it is contraband or is forfeited to the Court, property taken as evidence shall be returned to the owner after final judgment. Property confiscated as contraband or otherwise forfeited by the Court shall become the property of the Band and may be either destroyed, sold at public auction, retained for the benefit of the Band, or otherwise lawfully disposed of as ordered by the Court.

### **CHAPTER 4 – ARRAIGNMENT, PLEA, AND RELEASE**

#### **4.4.1. Arraignment.**

- (a) **Definition.** Arraignment is the bringing of an accused before the court, informing him of his rights and the charges against him, receiving his plea, and setting bail as appropriate in accordance with Sections 4.4.6 through 4.4.9 of this Title.
- (b) **Procedure.** Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody. In no instance shall arraignment be later than the next regularly scheduled session of court, or within 48 hours, whichever occurs first, excluding Saturdays, Sundays, and legal holidays.
- (c) **Rights of the Accused.** Before an accused is required to enter his/her plea to any criminal charge against him, the judge shall:
  - (1) Read to the accused and determine that he understands the complaint and the section of the Tribal Code which he is charged with violating, including the maximum

authorized penalty;

- (2) Advise the accused that he has the right to remain silent; to a trial; to be presumed innocent; to be found guilty only upon proof beyond a reasonable doubt; and to be represented by counsel at his own expense and that arraignment will be postponed a reasonable length of time should he desire to consult with counsel;
- (3) Advise the accused subject to the penalties prescribed for a Felony under Title 5, Section 5.1.9(b)(1), of the Bois Forte Tribal Code of their rights under Section 5.1.10 of the Bois Forte Tribal Code; and
- (4) Advise the accused subject to Special Tribal Criminal Jurisdiction under Title 5, Chapter 2 of the Bois Forte Tribal Code of their rights under Title 5, Section 5.2.3 of the Bois Forte Tribal Code.

#### **4.4.2. Receipt of Plea at Arraignment.**

At the time of the arraignment of a defendant charged with a crime or offense, the Court shall ask the person charged if he understands the nature of the charge and of the rights of which he has been informed and, upon being satisfied that the defendant does understand, shall ask the defendant to plead either not guilty, guilty, or no contest. The plea of the defendant shall be entered in open court. In the event a defendant remains silent or refuses to plead, the Court shall enter a plea of not guilty.

#### **4.4.3. Not Guilty Plea.**

Upon entry of a plea of “not guilty” the Court shall schedule the matter for pre-trial hearing and set conditions for bail, if any, supervised release upon the defendant’s personal recognizance. A plea of not guilty creates a presumption of innocence and places all factual issues in dispute which are then the burden of the prosecution to prove beyond a reasonable doubt.

#### **4.4.4. Guilty Plea.**

If the accused pleads “guilty” to the charge, the judge shall not accept the plea without first addressing the accused personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the judge is satisfied that there is a factual basis for the plea, he may enter judgment and impose sentence or defer sentencing for a reasonable time to obtain any information he deems necessary for imposition of a just sentence. If sentencing is deferred, the accused may be released on such terms and conditions as may be imposed by the Court. If the Court is not satisfied that a factual basis exists to support a plea of “Guilty” it shall enter a plea of “Not Guilty” and proceed accordingly.

#### **4.4.5. No Contest Plea.**

A plea of no contest means that the defendant does not challenge or contest the alleged facts and legal basis of the charge(s) set forth in the complaint or citation and leaves it to the

determination of the Court as to whether or not the facts alleged constitute proof beyond a reasonable doubt. No such plea shall be accepted by the Court unless it is satisfied that the defendant clearly understands the consequences of such a plea. Upon accepting such a plea the Court shall then make its determination from the record as to whether or not the defendant is guilty of the crime(s) or offense(s) charged and shall enter the same and proceed accordingly.

#### **4.4.6. Bail - Release Prior to Trial.**

Every person charged with a criminal offense before the court shall be entitled to release from custody pending trial under whichever of one or more of the following conditions is deemed necessary to reasonably assure the appearance of the accused at any time lawfully required:

- (a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and at all other lawfully required times.
- (b) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.
- (c) Release after the deposit of a bond by the accused or a bondsman in an amount specified by the judge, the amount to be fixed so as to insure the presence of the accused at trial or other time, having due regard for the nature and circumstances of the offense charged, the character and past history of the accused, the danger to the community, and the record of appearing at prior hearings. In no case shall bail exceed three (3) times the maximum fine for each offense that has been charged.
- (d) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.
- (e) The Court may also impose any other conditions that are reasonably designed to ensure the safety of the community and the protection of witnesses and victims, if any.

#### **4.4.7. Release from Custody upon Receipt of Bail.**

Upon receipt of the required recognizance or bond or other condition, the court shall if the accused is in custody, deliver an order to discharge him from custody.

#### **4.4.8. Forfeiture of Bail.**

If the accused fails to appear for trial or when his appearance is lawfully required, such failure may be recorded, and the bond or any security deposited may be forfeited without further proceedings, and the Court may thereafter issue a warrant for the arrest of the accused.

#### **4.4.9. Bail, Release by Police Officer.**

Any police officer may admit an arrested person to bail at a cash bond of ten (10) percent of the maximum fine for the offense charged when authorized to do so by the court or when

arraignment will not be made within twenty-four (24) hours of the arrest. Any bail requirement set by a tribal police officer is subject to review by the Tribal Court.

#### **4.4.10. Withdrawal of Guilty Plea.**

The court may, in its discretion, allow an accused to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by so doing.

### **CHAPTER 5 – TRIAL**

#### **4.5.1. Trial.**

Subject to the provisions of Section 4.5.2(a), cases shall be tried by the court unless the accused demands a jury trial at the time of arraignment. A demand for a jury trial shall be considered unreasonable if made after the date set for trial by the court.

#### **4.5.2. Jury Trial.**

- (a) In any criminal or traffic case punishable by a sentence of incarceration upon conviction thereof, the defendant has a right, upon demand, to a jury trial. If the prosecutor informs the court at any time prior to trial, either in writing or upon the record in open court, that the imposition of a jail sentence will not be sought upon conviction, trial shall be before the court without a jury and the court may not thereafter impose a sentence of incarceration upon conviction of the crime and/or offense charged.
- (b) A jury shall consist of six (6) persons who shall be selected from a list of eligible jurors prepared each year by the court. Subject to Section 4.5.2(c), an eligible juror shall be at least eighteen (18) years of age; an Indian person who is either a permanent resident of the Bois Forte Indian Reservation or an enrolled member of the Bois Forte Band of Chippewa; shall not have been convicted of a felony; shall not be an employee of the Bois Forte Tribal Court or the Nett Lake Police Department; and shall not be otherwise unqualified according to written standards established by the Court under its general rule-making authority. Until such time as the Court establishes such written standards, the present provisions contained in Section 4.5.2, Bois Forte Tribal Court Code (1980), as amended, shall remain in effect. Any party may challenge without cause not more than three members of the jury panel so chosen.
- (c) Where the Bois Forte Band of Chippewa exercises Special Tribal Criminal Jurisdiction pursuant to Title 5, Chapter 2 of the Bois Forte Tribal Code, any potential juror must meet the eligibility requirements established in Section 4.5.2(b), except for the requirement that a juror must be an Indian person who is either a permanent resident of the Bois Forte Indian Reservation or an enrolled member of the Bois Forte Band of Chippewa. In such a case, the juror must be drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community.

- (d) The Court shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of the law. The jury shall be sworn under oath in a manner and form prescribed by the Court prior to commencing its deliberations.
- (e) The jury shall deliberate in secret and shall return a verdict of guilty or not guilty. All six (6) of the jurors must concur to render a verdict.
- (f) Each juror trying a case shall be entitled to compensation for each day, or portion of a day, that the juror sits on the case. Such compensation may be established by order of the Tribal Court, provided that it is approved by the Bois Forte Reservation Tribal Council. Any such order shall be deemed approved if the Bois Forte Reservation Tribal Council does not reject or object to the order within sixty (60) days after the date that it is submitted for approval. In addition, each person called to serve on a jury, whether such person is selected or not, shall be entitled to reimbursement for their actual mileage not to exceed the maximum rate per mile established by the Bois Forte Reservation Tribal Council for tribal employees while traveling on official duties.

#### **4.5.3. Witnesses.**

- (a) **Subpoenas.** The trial judge shall have the power to issue subpoenas for the attendance of witnesses either on his or her own motion or on the request of any of the parties to the case. Such subpoena shall command the person named therein to attend and give testimony at a time and place specified, and may include direction to produce the books, papers, documents, and objects in the possession or under the control of the person served and designated in the subpoena. A subpoena must bear the signature of the issuing judge.
- (b) **Service.** Service of subpoenas shall be by a tribal police officer or by an adult member of the Band appointed by the Court for the purpose.
- (c) **Failure to Comply.** Failure by any person without adequate excuse to obey a subpoena served upon him shall constitute a violation of this Code.
- (d) **Quash.** Upon prompt notice by the person served with a subpoena, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.
- (e) **Witness Fees.**
  - (1) Each witness answering a subpoena shall be entitled to a fee in accordance with the allowances of Section 4.5.2(f). The fee shall be the responsibility of the party requesting the subpoena, unless such fee is held by the Court to constitute court costs.
  - (2) Witnesses who testify voluntarily shall be paid by the party calling them.

#### **4.5.4. Presence of Defendant.**

The defendant in a criminal case shall be present in the court at arraignment, at every stage of the trial proceedings, including impaneling of the jury, the return of the verdict where trial is by jury, and at the imposition of sentence.

#### **4.5.5. Rights of the Defendant.**

- (a) **Generally.** Subject only to the provisions of 4.5.2(a), in all criminal prosecutions, the defendant shall have the right:
- (1) To represent himself or herself in person or be represented by counsel at his or her expense;
  - (2) To be informed of the nature of the charges against him or her and to have a written copy of those charges;
  - (3) To confront and cross-examine, in person, all prosecution or hostile witnesses;
  - (4) To compel by subpoena:
    - (A) The attendance of any witnesses necessary to defend against the charges; and
    - (B) The production of any books, records, documents, or other things necessary to defend against the charges; and
  - (5) To a speedy and public trial;
  - (6) To be free from excessive bail and cruel and unusual punishment;
  - (7) Not to be compelled to give evidence against himself or herself or twice be put in jeopardy of criminal trial and conviction for the same offense. No inference may be drawn from a defendant's exercise of the right not to testify;
  - (8) To all other rights listed in the Indian Civil Rights Act, 25 U.S.C. § 1302.
- (b) Where the crime is punishable as a Felony under Title 5, Section 5.1.9 of the Bois Forte Tribal Code, the defendant shall be entitled to those rights guaranteed under Title 5, Section 5.1.10 of the Bois Forte Tribal Code.
- (c) Where the defendant is being prosecuted under Special Tribal Criminal Jurisdiction pursuant to Title 5, Chapter 2 of the Bois Forte Tribal Code, the defendant shall be entitled to those rights guaranteed under Title 5, Section 5.2.3 of the Bois Forte Tribal Code.

## CHAPTER 6 – POST-CONVICTION PROCEDURES

### 4.6.1. Writ of Habeas Corpus.

#### (a) Availability.

- (1) Except as provided in Section 4.6.1(a)(2), every person within the jurisdiction of the Bois Forte Band imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.
- (2) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.
- (3) When a person is imprisoned or detained in custody by the Bois Forte Band on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring the fact in his petition, without alleging that he is illegally confined.

#### (b) Issuance.

- (1) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Court. It must specify:
    - (A) That the petitioner is unlawfully imprisoned or restrained of liberty;
    - (B) Why the imprisonment or restraint is unlawful; and
    - (C) Where or by whom the petitioner is confined or restrained.
  - (2) The parties to a writ, namely the Bois Forte prosecutor, judge, and the Bois Forte Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.
  - (3) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.
- (c) **Granting the Writ.** Any appellate justice may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the justice's jurisdiction. If it appears to such justice that a writ ought to issue it shall be granted

without delay, and may be returnable to the Court of Appeals.

**(d) Time of Issuance and Requirements for Service.**

- (1) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Judge of the Trial Court.
- (2) The writ must be served upon the person to whom it is directed. If the writ is directed to a tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.
- (3) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the appellate justice, in the same manner as a civil summons, except where otherwise expressly directed by the appellate justice, the Court, or the employee of any correctional facility in which the petitioner is held.

**(e) Return of the Writ.** The Prosecutor or his or her designee shall make a return and state in that return:

- (1) Whether the person is in custody or under that person's power of restraint; and
- (2) If that person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or
- (3) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

**(f) Hearing.** The trial judge commanded by the writ shall cause the petitioner to be brought before an appellate justice as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

**(g) Refusal to Obey Writ is Contempt.** If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

**(h) Disposition of the Petitioner.** If the Court finds in favor of the petitioner, an

appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

## CHAPTER 7 – GENERAL PROVISIONS

### 4.7.1. Motions.

- (a) **Definitions.** A motion is a formal method by which a party submits a proposed measure of resolution for the consideration and action of the Court.
- (b) **Pre-Trial Motions.** The following motions shall be made before trial, unless the accused shall show at trial that his rights will be prejudiced if the motion is not considered by the Court:
  - (1) Motion to set aside complaint on the grounds that it does not comply with the requirements of Section 4.1.3; where it is found that the defendant has been charged without probable cause; or upon a determination that the Tribal Court has no jurisdiction over the person or the offense.
  - (2) Motion for bill of particulars on the ground that the defendant must have facts other than those in the complaint in order to prepare his defense.
  - (3) Motion for a change of trial judge on the ground that there cannot be an impartial trial by reason of the bias or prejudice of the presiding trial judge.
  - (4) Motion to suppress evidence that has been obtained in an unlawful manner.
- (c) **Ruling on Motions.** The Court shall either grant or deny all motions made to him and have his order entered in the record of the case along with his reasons for his ruling. If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the judge shall alter the proceeding or enter judgment as is appropriate in light of the decision.

### 4.7.2. Evidence.

The admissibility of evidence and the competency and privileges of witnesses shall be governed by the Federal Rules of Evidence; subject to the exception contained in Section 6.3.8.

### 4.7.3. Harmless Error and Plain Error.

- (a) Any error, defect, or irregularity or variance that does not affect substantial rights shall be disregarded.

- (b) Errors or defects affecting substantial rights may be recognized and acted upon by the Court even though they were not brought to the attention of the Court by counsel.

#### **4.7.4. Regulation of Conduct in the Court Room.**

The trial judge may regulate the conduct of persons in the courtroom to ensure a fair and impartial trial and may forbid the taking of photographs or other visual or audio recordation of proceedings occurring therein.

#### **4.7.5. Order of Trial Procedure.**

Trials to the Court shall apply subsections (c)-(f) below, and subsections (a)-(f) below shall apply to jury trials.

- (a) **Jury Impaneled.** In a jury trial, when a jury of six (6) persons are accepted by the prosecution and the defense, they shall be sworn by the Clerk of Court to try the facts.
- (b) **Complaint Read.** In a jury trial, the clerk or trial judge shall then read the complaint and state the plea of the defendant to the jury.
- (c) **Opening Statements.** Opening statements as to the facts to be proven by the evidence may be given by the tribal prosecutor, followed by the defendant or his counsel, provided that the latter's opening statement may be deferred until presentation of the defense's case.
- (d) **Prosecution's Evidence.** The tribal prosecutor shall open the case and offer evidence in support of the charge. The defendant or his counsel shall have the right to question any witness called to testify by the tribal prosecutor.
- (e) **Defendant's Evidence.** The defendant or his counsel may then open the defense and offer evidence in support. The tribal prosecutor shall have the right to question any witness called to testify by the defendant or his counsel.
- (f) **Final Argument.** When all the evidence is before the Court or the Court and the jury, the tribal prosecutor, then the defendant or his counsel may argue the case to the Court or the Court and jury.
- (g) **Instructions to the Jury.** Upon the conclusion of the arguments, the Court shall charge the jury, if one is impaneled, stating the law of the case. The Court may, in its discretion, give the jury such instructions on the law applicable to the case at any time during the trial.

#### **4.7.6. Presumption of Innocence.**

A defendant in a criminal action is presumed to be innocent of the charge until the prosecution proves his guilt beyond a reasonable doubt. The jury shall be instructed that the burden

is on the Band to meet the requisite standard of proof; also, that the defendant need not testify, that his failure to testify on his own behalf may in no way be held against him. Such failure shall not be commented upon by the tribal prosecutor.

#### **4.7.7. Joint Defendants.**

When two or more defendants are jointly charged with a tribal offense, they shall be prosecuted jointly; provided that the Court may, in its discretion, direct that separate trials be had in the interest of justice to each defendant.

#### **4.7.8. Discharge of Juror; New Trial.**

If, before the jury has returned its verdict to the Court, a juror becomes ill or for other good cause shown to the judge is found to be unable to perform his duty, the Court may order the juror to be discharged. When a juror is discharged, the court may, upon agreement of prosecution and defense, proceed in the case in the absence of said juror.

#### **4.7.9. Judgment of Acquittal.**

At any time after all the evidence of either side is before the Court, the judge may direct the jury to return a verdict of acquittal; in the event of the failure of the jury to return a verdict of acquittal, the judge may refuse to receive any other verdict and may discharge the jury and enter a judgment of acquittal.

#### **4.7.10. Verdict.**

The verdict of the jury must be unanimous and returned in open court. A general verdict of “guilty” or “not guilty” must be rendered, and such verdict shall constitute a conviction or acquittal on every allegation of fact in the complaint upon which the defendant was charged. In its discretion or upon the motion of prosecutor or defendant, the Court may poll the jury to determine that the verdict entered was in fact the uncoerced decision of each juror.

#### **4.7.11. Execution of Judgment.**

- (a) **Imprisonment.** When a sentence of imprisonment is entered, a copy thereof signed by the trial judge shall be delivered to the police, which is a sufficient warrant for its execution.
- (b) **Fine.** When a sentence is entered imposing a fine, payment of the fine by the defendant shall cause him to be immediately set free unless he is detained for other legal cause.
- (c) To the extent, if any, that this Section and Sections 4.7.12 through 4.7.15 of Title 4 may be inconsistent with any provisions set forth in Title 5, Sections 5.1.11 through 5.1.15, as amended (2017), the amended provisions of Title 5 shall prevail.

#### **4.7.12. Imprisonment for Fine.**

(a) **Inability to Pay.** Upon showing of indigency, a defendant may not be incarcerated solely because of his inability to pay the assessed fine but may, in the discretion of the court, be given the choice of:

(1) Performing services for the community which are within his or her range of skills and as provided in Section 5.1.12 until such time as the assessed fine and costs have been satisfied; or

(Resolution 84-2003; November 21, 2002)

(2) Release on probation, one of the terms of which shall include the payment, in regular installments within his means, of the total fine and costs assessed.

(b) **Failure to Comply with Sentence.** A defendant, indigent or not, may be incarcerated for his failure to comply with the court's order to perform services as is specified in subsection (a)(1) above or his failure to comply with the terms of his probation with respect to timely payments as is specified in subsection (a)(2) above.

#### **4.7.13. Suspension of Sentence.**

The Court may, on such terms and conditions as the Court may impose, suspend the sentence and release a convicted person on probation for the duration of the sentence.

#### **4.7.14. Probation.**

(a) **Conditions.** The Court may release on probation a convicted person on such terms and conditions as are just and appropriate, taking into consideration the prior criminal record of the defendant, his background, character, financial condition, family obligation, and any other pertinent circumstances.

(b) **Violations of Probation Conditions.** Any person who violates the terms and conditions of his probation or suspension of sentence shall be required at the discretion of the Court to serve the original sentence.

#### **4.7.15. Parole.**

(a) **Eligibility.** Any person confined to jail who shall have served without misconduct one-half of the sentence imposed shall be eligible to be considered for parole, upon written application to the Court.

(b) **Granting Parole.** Paroles may be granted by the Court upon such terms and conditions, including the requirement of personal reports from the person paroled, as the Court may prescribe.

- (c) **Violation of Parole.** Any paroled person who shall violate any provision of his/her parole, at the discretion of the Court, shall be apprehended and confined to serve the remainder of the original sentence, diminished as to the time the person was released on parole.

#### **4.7.16. New Trial.**

- (a) **Application.** Application for a new trial may be made only by the defendant or his counsel and must be made before completion of the sentence to the judge before whom the case was tried.
- (b) **Grounds.** The judge on application from the defendant, may grant a new trial based upon a finding that any of the following has occurred:
  - (1) The jury has received any evidence, paper, or document out of court not authorized by the trial judge;
  - (2) The verdict has been decided by lot or by any other means that are not fair expression of opinion on the part of the jury; or
  - (3) The defendant has not received a fair and impartial trial for any other cause.
- (c) **Effect of New Trial.** The granting of a new trial places the parties in the same position as if no trial has been held; all testimony must be reproduced and the former verdict cannot be used or referred to either in the evidence or in argument.
- (d) **Status of Defendant.** Pending a new trial, the accused shall be entitled to bail under the same conditions and qualifications as for bail before trial.

#### **4.7.17. Appeal of Conviction.**

A defendant convicted of a crime or an offense pursuant to the provisions of the Bois Forte Tribal Code may appeal a final judgment of conviction or of an order entered after judgment affecting his or her civil rights. Said appeal shall be taken to the Bois Forte Court of Appeals in the manner and within the time provided by Title 3 of the Bois Forte Tribal Code. Pending the outcome of said appeal, the Bois Forte Tribal Court may stay execution of any sentence imposed or order entered upon such conditions, including release of the defendant, as the Tribal Court deems just and reasonable under the circumstances.

#### **4.7.18. Extradition.**

- (a) **Tribal Court's Authority.** The Bois Forte Tribal Court may order transfer of custody to the proper state, tribal, or BIA law enforcement authorities of any person found within the jurisdiction of the Bois Forte Band of Chippewa who is sought by such authorities for the commission of an offense in another jurisdiction, including juveniles charged with committing a delinquent act which would be criminal if committed by an

adult.

- (b) **Certified Copies.** Certified copies of the criminal complaint, information, indictment, juvenile delinquency petition, judgement of conviction, arrest warrant, commitment order, juvenile detention order, or similar papers, received from the jurisdiction seeking transfer shall be promptly filed with the Clerk of the Bois Forte Court and no Order of Transfer shall be issued by the tribal court until such papers have been filed or the accused has waived extradition either in writing filed with the court or open court.
- (c) **Hearing.** The accused shall be accorded a right to contest the propriety of a proposed order of transfer in a hearing before the court. The accused shall have the right to be represented by legal counsel chosen by him/her at his/her own expense. The parent, guardian, or other custodian of a juvenile accused shall be notified of the hearing and have the right to appear and participate. The court shall not determine the accused's guilt or innocence concerning the offense(s) for which he/she is being sought. Upon being satisfied that appropriate papers have been received and filed, the court shall order transfer of the accused to appropriate officials of the other jurisdiction if the offense for which the person has been charged or convicted is a felony and may order such transfer in any other case in which the interests of justice support such a transfer. The court may order a continuance of an extradition hearing for reasonable cause upon motion of the accused, the tribal prosecutor, or upon its own motion.
- (d) **Taking into Custody.**
  - (1) Any law enforcement officer of the Bois Forte Band of Chippewa may take into custody, pending extradition, any person found within the jurisdiction of the Bois Forte Band of Chippewa alleged to have committed an offense in another jurisdiction, including juveniles alleged to have committed a delinquent act which would be criminal if committed by an adult, if the Bois Forte has probable cause to believe that an arrest warrant, commitment order, juvenile detention order, or similar order has been issued by a court of the other jurisdiction.
  - (2) Any law enforcement officer of the Bois Forte Band of Chippewa may take into custody, without an arrest warrant or detention order and pending extradition, any person including juveniles found within the jurisdiction of the Bois Forte Band of Chippewa sought by law enforcement authorities of another jurisdiction for the alleged commission of a felony if the Bois Forte officer has probable cause to believe the accused committed the felony and is being sought by the other jurisdiction.
- (e) **Waiver of Extradition Hearing.** Any person taken into custody pursuant to the provisions of subsection (d), above, may voluntarily waive his/her right to an extradition hearing by executing the same in writing and filed with the Clerk of Court upon a form prepared by the tribal prosecutor, copies of which form shall be supplied to the Nett Lake Police Department. A parent, guardian, or lawful custodian of a juvenile accused shall join in any such waiver.

- (f) **Release from Custody.** The Bois Forte Tribal Court may, in its discretion, authorize the release of any person being held in custody pursuant to this section upon the posting of sufficient bail or other conditions imposed by the court to guarantee said person's appearance at the extradition hearing. The court shall order the release of any such person where the other jurisdiction has failed to furnish the Clerk of Court with certified copies of the complaint, information, indictment, or judgement of conviction, and arrest warrant, within 72 hours of the person having been taken into custody or such longer time as the Bois Forte Tribal Court may direct for reasonable cause.
- (g) **Transfer to Other Authorities.** No person taken into custody pursuant to the provisions of subsection (d), above, shall be transferred to any state or other authorities unless said transfer has been ordered by the Bois Forte Tribal Court or unless said person has voluntarily consented to such transfer provided herein.

(Resolution No. 128-97, April 3, 1997)

#### **4.7.19. Rules of Court.**

The tribal judge may, in conjunction with the other tribal judges, promulgate rules governing criminal trial procedure not inconsistent with these rules and Bois Forte Tribal Code, and copies of such rules shall be made available for public inspection and copying. If no procedure is specifically prescribed by rule, the Court may proceed in any lawful manner not inconsistent with these rules on the principles of justice and fairness underlying these rules.

#### **4.7.20. Exclusion.**

- (a) The Court may, upon application or petition of the Bois Forte Reservation Tribal Council or its authorized designee, and upon notice to all parties and a hearing, order any person, Indian or non-Indian, to be excluded from the territorial jurisdiction of the Bois Forte Band of Chippewa upon a showing, based upon clear and convincing evidence, that said person poses a substantial threat to the continued safety and well-being of the residents of the Bois Forte Reservation or to the orderly conduct of the official business of the Bois Forte Band of Chippewa by reason of said person's acts or conduct. The term and conditions of any such exclusion order may be such as the Bois Forte Tribal Court deems necessary and proper under the circumstances and may be stayed by the Court pending appeal.
- (b) **Rescission.** The Court may rescind any previously-issued exclusion order upon its own motion or application or petition of the person excluded, his or her representative, the Bois Forte Reservation Tribal Council or its authorized designee, or any other interested party, and upon notice to all parties and after a hearing upon the application or petition and when the interests or justice so require.

#### **4.7.21. Direct Contempt of Court.**

- (a) Whoever in the immediate view and presence of the Court engages in disorderly, contemptuous, or insolent behavior toward the judge while holding court or engages in boisterous or violent conduct tending to interrupt the business of the court may be found to be in direct contempt of court.
- (b) A direct contempt of court may be punished summarily, for which an order shall be made reciting the facts as occurring in the immediate view and presence of the Court and adjudging the person to be guilty of contempt.
- (c) The maximum punishment which the Court may impose for an act of direct contempt of court shall be five (5) days incarceration or a civil penalty not exceeding \$250.00, or both.

(Resolution No. 99-2007; September 21, 2006)

#### **4.7.22. Constructive Contempt of Court.**

- (a) Whoever does any of the following, whether by act or omission outside the immediate presence of the Court, may be found in constructive contempt of court:
  - (1) Deceit or abuse in the process or proceeding of the Court by a party to an action or special proceeding;
  - (2) Refusing to be sworn or answer as a witness;
  - (3) Disobedience of any lawful judgment, order, summons, subpoena, or other process of the Court; or
  - (4) Any other unlawful interference with the process or proceeding of the Court.
- (b) Upon receipt of an affidavit receiving the facts and alleging a constructive contempt of court, the Court may bring the person charged to answer by issuing an arrest warrant, by notice without a previous arrest, or by an order to show cause.
- (c) If the Court finds the alleged constructive contempt of court has occurred, the Court may commit the person to be incarcerated, impose a civil penalty, or both, as provided in Section 4.7.21(c).
- (d) When the constructive contempt of court consists of an omission to perform an act that is yet in the power of the person to perform, the act shall be specified in a warrant of commitment to incarceration until the person performs the act specified, provided that the term of incarceration in such cases shall not exceed five (5) days.

(Resolution No. 99-2007; September 21, 2006)

**4.7.23 – 4.7.86. Reserved for future use.**