

Bill Number MNL – 2011-01B
Concerning Matters of Citizenship in the Modoc Nation



Be it enacted by the Modoc Nation by and through the Legislative Council sitting in session on the 29th day of January, 2011 the following provisions concerning matters of citizenship in the Modoc Nation. Said provisions shall become the law of the Modoc Nation effective upon the date of its approval by the Nation's Chief Executive in accordance with Article 12, Section 2, Paragraph (d), or otherwise, with Article 11, Section 8 of the Constitution of the Modoc Nation.

Short Title. This legislation shall be referred to as the "Modoc Nation Citizenship Code of 2011".

Section 1. Authority and Legislative Purpose

- 1.1 The authority to enact a Citizenship Code for the Modoc Nation is founded on Article 11, Section 10 of the Constitution of the Modoc Nation.
- 1.2 Article 4 of the Constitution of the Modoc Nation sets forth the terms upon which citizenship in the Modoc Nation will be granted, denied, or revoked and establishes a permanent Citizenship Committee that is empowered to carry out these functions. The purpose of this legislation is to set forth the procedures and standards that will be followed in establishing who is and who is not entitled to citizenship in the Modoc Nation and to provide for the maintenance of an official roll of all citizens of the Modoc Nation.

Section 2. Definitions

- 2.1 "Adoption" means admission to citizenship in the Modoc Nation by the procedure for adoption set forth below.
- 2.2 "Adult" means any person who has reached the age of majority, which is eighteen (18) years or older.
- 2.3 "Applicant" means any person who has formally applied to become a citizen of the Modoc Nation prior to approval or denial of the application, and shall include a parent or legal guardian on behalf of a minor or incompetent person seeking citizenship. "Applicant" also means any person who reapplies for enrollment on the basis of the discovery of new evidence; any citizen who requests voluntary disenrollment as a citizen of the Modoc Nation; and any person who reapplies for enrollment subsequent to his or her voluntary disenrollment. The term applies only to a person during the period of time between the filing of his or her application and its approval or denial by the Citizenship Committee.
- 2.4 "Bad faith" means malicious intent as it relates to the commission of an act or refusal to act. It is the opposite of "good faith."
- 2.5 "Citizen" means any living person who is a duly enrolled member of the Modoc Nation.
- 2.6 "Citizenship" means the status of a citizen with its attendant rights, duties and privileges.

- 2.7 “Clear and convincing evidence” means evidence of such superior weight and credibility that it causes the trier of fact to have a firm belief or conviction that the alleged fact for which the evidence is offered in support is more highly probable to be true than not. A greater degree of believability must be met than the common standard of proof in civil actions, “preponderance of the evidence,” which requires that the facts more likely than not prove the issue for which they are asserted.
- 2.8 “Code” means this body of legislation called the “Citizenship Code of the Modoc Nation”.
- 2.9 “Committee” means the Citizenship Committee of the Modoc Nation, as established in Section 3, below.
- 2.10 “Council” means the Legislative Council of the Modoc Nation.
- 2.11 “Enrollment” means the official placement of a person’s name upon the Modoc Nation’s roll in accordance with the procedures set forth in this Code.
- 2.12 “Executive session” means a meeting or hearing that has been closed to all persons other than the governing body holding the hearing and the parties, witnesses, legal counsel and any other person whose presence is necessary to the matter being discussed or heard.
- 2.13 “False swearing” means, while under oath or affirmation, the knowing and willful:
- 2.13.1 falsification, concealment, or covering up by any trick, scheme, or device a material fact;
 - 2.13.2 making of any materially false, fictitious, or fraudulent statement or representation; or
 - 2.13.3 making or use of any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
- 2.14 “Fraudulent” means obtained, done by, or involving intentional deception made for personal gain or to damage another individual or the Nation itself.
- 2.15 “Frivolous” means having no sound basis in fact or law and, therefore, virtually no chance of being approved or of prevailing.
- 2.16 “Immediate family” means father, mother, sister, brother, daughter, son, spouse or spouse equivalent, or any other person living in the same household.
- 2.17 “Minor” means any person who has not yet reached the age of majority, which is eighteen (18) years or older.
- 2.18 “Modoc descendant” means any person, regardless of blood quantum, who is lineally descended from any person who is now or, if deceased, was Modoc.
- 2.19 “Nation” or “the Nation” means the Modoc Nation.
- 2.20 “Parent” means the natural, biological parent, except in the case of adoption.
- 2.21 “Person” means any human being of any age or sex whether or not an enrolled citizen of the Modoc Nation.
- 2.22 “Petitioner” means any entity who formally petitions the Legislative Council to involuntarily revoke the enrollment of any person who is a citizen of the Modoc Nation. This entity can be either an individual Modoc citizen or the Citizenship Committee, acting *sua sponte*.
- 2.23 “Preponderance of evidence” means evidence that is superior in weight, importance or strength, and that is more credible and convincing to the mind than the opposing evidence.

- 2.24 "Roll" or "Tribal Roll" means the list of living citizens enrolled at any given time in the Modoc Nation.
- 2.25 "*Sua Sponte*" refers to an action taken by the Committee of its own will, without the request of any other person or party to a proceeding.
- 2.26 "Tribal" means of, or referring to, the Modoc Nation.
- 2.27 "Tribal Member" or "Member" means any person who is a duly enrolled citizen of the Modoc Nation.

Section 3. Citizenship Committee

3.1 Membership.

- 3.1.1 The Citizenship Committee shall consist of three (3) adult citizens of the Nation, none of whom are members of the same immediate family, as that term is defined in Section 2, above.
- 3.1.2 Committee members shall be appointed by the Chief Executive of the Nation with the advice and consent of the Legislative Council, to serve staggered three-year terms. Members may serve more than one consecutive term in office.
- 3.1.3 Committee members shall take the oath of office set forth in Article 18, Section 1 of the Constitution of the Modoc Nation, administered by the Chief Executive of the Nation. In accordance with Article 18, Section 2 of the Constitution, the oath shall be filed in the Office of the Secretary of State.
- 3.1.4 From among its members the Chief Executive shall select a Chairperson and Vice-Chairperson of the Committee.
- 3.1.5 Committee members are subject to removal for cause, as determined by the Chief Executive of the Nation.

3.2 Enrollment Staff.

- 3.2.1 The Chief Executive may authorize the employment of staff to assist the Citizenship Committee in the exercise of its powers and the performance of its duties.
- 3.2.2 The members of the Enrollment Staff are tribal employees and are subject to tribal personnel policies and regulations in the same manner as other tribal employees.

3.3 Powers and Duties.

- 3.3.1 The Committee shall draft for consideration by the Chief Executive such regulations and forms as may be necessary to fairly implement this Code. All such regulations and forms shall be published and available for public inspection and copying in accordance with applicable Modoc law.
- 3.3.2 The Committee shall ensure that all forms required by this Code are up to date and posted on the Modoc Nation website in a manner such that they may be completed online or downloaded and completed manually by any citizen of the Nation or any person who desires to become a citizen of the Nation or accomplish any other purpose set forth within this Code.

- 3.3.3 The Committee, upon request, shall make available enrollment application forms and other forms it has designed to carry out the provisions of this Code.
- 3.3.4 In accordance with the procedures and standards of proof set forth hereinbelow, the Committee shall review, evaluate and grant or deny all:
 - 3.3.4.1 applications for enrollment;
 - 3.3.4.2 reapplications for enrollment based on the discovery of new evidence;
 - 3.3.4.3 applications for voluntary disenrollment; and
 - 3.3.4.4 applications for re-enrollment subsequent to voluntary disenrollment.
- 3.3.5 The Committee shall have the power to initiate *sua sponte* and file with the Legislative Council for determination petitions for involuntary revocation of enrollment.
- 3.3.6 The Committee shall have the power to hold formal hearings on any matter pertaining to the issues set forth in Paragraphs 3.3.4 and 3.3.5, above.
- 3.3.7 The Committee shall maintain files with supporting information and documents for each application or reapplication it receives, reviews, evaluates and grants or denies. This provision shall apply also to each *Petition for Involuntary Revocation of Enrollment* the Committee files *sua sponte* with the Legislative Council.

3.4 Meetings and Formal Hearings of the Committee.

- 3.4.1 Two (2) of the three (3) members of the Committee must be present at any Committee meeting in order to conduct any Committee business. For purposes of this Paragraph, a member shall be considered present, if he or she attends the meeting by telephone conference or through the use of Internet conferencing tools.
- 3.4.2 All decisions of the Committee shall require a majority vote. No member may abstain from voting on the disposition of any matter before the Committee unless he or she was not present during the consideration or hearing of the matter.
- 3.4.3 The Committee shall take minutes of its meetings and maintain a written record of all actions that it takes, including the names of the Committee's members and how each of them voted.
- 3.4.4 All formal hearings conducted by the Committee shall be video recorded and permanently maintained on media from which a written transcript can be produced.

3.5 The Tribal Roll.

- 3.5.1 The Committee shall maintain under security an original roll of all citizens of the Modoc Nation enrolled during the period beginning on August 29, 2010 and ending at the close of business one year from the date this Code is enacted into law. An updated roll shall be printed annually the last week of December and included in the annual tribal report.
- 3.5.2 The Committee shall submit quarterly reports to the Chief Executive and Legislative Council of the Modoc Nation listing the additions and withdrawals of tribal members and the current number of enrolled citizens.
- 3.5.3 The names of deceased citizens shall be removed from the roll. Information on the deceased shall be maintained in both files and a list of formerly enrolled citizens.

3.6 Confidentiality.

- 3.6.1 Upon request of state or provincial agencies, federal agencies, or other native nations, tribes or bands, the Committee or Enrollment Staff shall provide written verification that a person is or is not enrolled as a citizen of the Modoc Nation.
- 3.6.2 Personal information from the Tribal Roll other than a citizen's name, enrollment number and date of enrollment shall be made available to the Chief Executive, Legislative Council, staff of various departments of the Modoc Nation, Bureau of Indian Affairs, and Indian Health Service only upon the demonstration of a lawful need to know such information, or as the result of a valid court order.
- 3.6.3 All applications for enrollment, voluntary disenrollment, re-enrollment or *sua sponte* petitions for involuntary revocation of enrollment, supporting documentation, notes of the Committee and transcripts of Committee hearings on such matters are confidential information. They shall be made available only to the parties themselves, the Committee and its Enrollment Staff, and to the Legislative Council and the courts of the Modoc Nation in accordance with the hearings and appeals provisions set forth hereinbelow.
- 3.6.4 Disclosure of enrollment information in a manner other than as provided in Subparagraphs 3.6.1 through 3.6.3, above, shall be grounds for termination as an employee, removal from the Citizenship Committee, or removal as an officer of the Modoc Nation in accordance with the provisions of Article 19 or Article 13, Section 7 of the Constitution of the Modoc Nation.

3.7 Conflict of Interest.

- 3.7.1 No member of the Citizenship Committee or Enrollment Staff shall participate in the review, evaluation, hearing or determination of any matter within the jurisdiction of the Citizenship Committee which involves a member of his or her "immediate family," as that term is defined in Section 2, above.
- 3.7.2 The non-participation of a member of the Committee because of such a conflict of interest shall not deprive the Committee of a quorum necessary to conduct its business.

Section 4. Eligibility for Citizenship

- 4.1 Classifications and Criteria. In order to be eligible for enrollment as a citizen of the Modoc Nation, a person must be:
 - 4.1.1 a person, regardless of blood quantum, who is lineally descended from any person who is now or, if deceased, was Modoc; or
 - 4.1.2 a person who, prior to the ratification and adoption of the Constitution of the Modoc Nation on June 19, 2010, was adopted into the Modoc Tribe in accordance with ancient Modoc tradition; or
 - 4.1.3 a minor who is adopted by one or more parents, who are themselves citizens of the Modoc Nation, in accordance with the statutes of the United States or any other nation state recognized by the United Nations and/or their respective states and provinces; or
 - 4.1.4 a person who completes a process of naturalization in accordance with the naturalization provisions set forth hereinbelow.

- 4.2 Universality of Rights. All citizens of the Modoc Nation, regardless of the classifications set forth in Subparagraphs 4.1.1 through 4.1.4 of this Section shall bear the same obligations and enjoy the same rights, privileges and immunities.
- 4.3 Enrolled Member of Another Tribe – Dual Citizenship Prohibited.
- 4.3.1 No person who is a citizen or enrolled member of another native nation, tribe or band may hold dual citizenship in the Modoc Nation.
- 4.3.2 The Citizenship Committee shall not consider or evaluate the application of any person who is currently a citizen or enrolled member of any other native nation, tribe or band until the Committee has received an official certified copy of a resolution or other document issued by such nation, tribe or band granting the applicant's request for voluntary disenrollment from such other nation, tribe or band. The resolution or other document granting voluntary disenrollment from the other nation, tribe or band shall not be considered deficient if it is made contingent and effective upon the applicant's enrollment as a citizen of the Modoc Nation.
- 4.3.3 The Committee shall include an explanation of the provisions barring dual enrollment as described in this subsection in the citizenship application materials provided to each applicant, and shall obtain the signature of every applicant who is a member of another nation, tribe or band, on a form acknowledging the applicant's understanding of these provisions.
- 4.4 Citizenship in Other Nation States. Nothing in this Code shall be construed to prohibit any citizen of the Modoc Nation from holding citizenship in the United States or any other nation state recognized by the United Nations.
- 4.5 Eligibility for Citizenship as a Result of Naturalization.
- 4.5.1 Under no circumstance is the Modoc Nation obligated to grant citizenship by naturalization to any person. The decision to grant or deny enrollment after an applicant's completion of the naturalization process is based solely on the Committee's exercise of sound judgment and discretion. A decision by the Committee to deny such an application is final and unappealable.
- 4.5.2 An applicant for enrollment by naturalization must demonstrate his or her desire to become a citizen of the Modoc Nation by:
- 4.5.2.1 actively taking part in and contributing to the affairs and functions of the Modoc Nation for a period of two (2) consecutive years. Such affairs and functions may include but are not limited to: attending meetings of the General Council; attending powwows and other tribal gatherings; participating in sweat lodge ceremonies, vision quests or other religious or ceremonial activities; assisting the Nation as a volunteer in any of its social or cultural programs designed to benefit the Nation or any segment of its population; and
- 4.5.2.2 passing the written test after completion of a course of study titled: "Modoc Legacy: a Guide to Understanding Modoc History and Culture."
- 4.5.3 All persons granted enrollment under this Section shall take an oath of allegiance before becoming a citizen of the Modoc Nation.

- 4.6 Limitation on Number of Naturalized Citizens – Waiting List. In order to preserve the unique native identity and culture of the Modoc Nation, the Committee shall not grant any application for citizenship based on naturalization unless doing so shall not increase the ratio of naturalized citizens to the total number of citizens on the Tribal Roll such that said ratio exceeds ten percent (10%). Applicants affected by this provision shall be placed on a waiting list in chronological order based on the date their completed applications are received by the Committee.

Section 5. Burden of Proof, Evidentiary Standards and Calculation of Time

- 5.1 Unless stated otherwise, the burden of proof is on the applicant or petitioner.
- 5.2 Unless stated otherwise, the evidentiary standard to be used for determining applications for enrollment or re-enrollment shall be a “preponderance of evidence.”
- 5.3 Unless stated otherwise, the evidentiary standard to be used for determining petitions for involuntary revocation of enrollment shall be “clear and convincing evidence.”
- 5.4 When calculating or counting the number of days by which a document is to be filed or an action is required to be taken under this Code, weekends or holidays recognized by the Modoc Nation shall not be included. If the final day falls upon a weekend or holiday as just described, the deadline for filing a document or carrying out an action shall be extended to the close of business on the first business day occurring immediately thereafter. Any form notice or other document required by this Code to be filed within a specified number of days, if it is filed by certified mail, return receipt requested, shall be considered filed as of the date it is postmarked.

Section 6. Applications for Enrollment and Supporting Documents

- 6.1 Who May File an Application. An application for enrollment may be filed by any person who believes he or she meets the enrollment criteria. An application for a minor or incompetent person may be filed by his or her parent/s, next of kin, legal guardian, or other person legally responsible for the applicant’s care and well-being.
- 6.2 Application Form.
- 6.2.1 The Committee or Enrollment Staff shall make available to any applicant who makes an oral or written request, an application form tailored to the category of citizenship under which the applicant is seeking to enroll.
- 6.2.2 Each application form shall contain spaces for at least the following elements and shall not be considered completed, unless all the blanks are properly filled with the required information:
- 6.2.2.1 the name of the applicant;
- 6.2.2.2 the applicant’s current mailing address, telephone number and email address (unless applicant has no telephone or email address);
- 6.2.2.3 the applicant’s date of birth;
- 6.2.2.4 the name of the applicant’s parents;
- 6.2.2.5 if the applicant is a minor or an incompetent person, the name of the person filing the application, the person’s relationship to the applicant (parent, next of kin, legal guardian, or other legal capacity), and the current mailing address, telephone

number and email address of such person(unless he or she has no telephone or email address) ;

- 6.2.2.6 a statement affirming that the applicant is not currently a citizen or enrolled member of any other native nation, tribe or band, or, if so, that the applicant has filed and been granted a request for voluntary disenrollment from such other native nation, tribe or band contingent and effective upon applicant's enrollment in the Modoc Nation;
- 6.2.2.7 a statement affirming that all of the statements and information set forth in the application are true, complete and correct to the best of the applicant's knowledge and are made in good faith;
- 6.2.2.8 the signature of the applicant and the date of the applicant's signature; and
- 6.2.2.9 the signature of a witness to the applicant's signature and the date of the witness' signature.

6.3 Supporting Documents.

- 6.3.1 Every application must include a legible copy of the official certified copy of the applicant's certificate of birth, or, if no birth certificate exists, a legible copy of the certified copy of the birth registry, issued by the state or province in which the applicant was born.
- 6.3.2 Every application for enrollment under the provisions of Paragraph 4.1.1, above, based on lineal descent from any person who is now or, if deceased, was Modoc, must include a pedigree chart showing the applicant's parentage and ancestry, supported by one or more of the following documents.
 - 6.3.2.1 Supporting documents may include but are not limited to: birth certificates; death certificates, baptismal records; 1928, 1950, or 1968 roll of Indians of California; the Modoc Nation Tribal Roll; Bureau of Indian Affairs reservation census records; United States, Canadian or other national census records; Bureau of Indian Affairs allotment or probate records; Bureau of Indian Affairs certificates showing blood degree; school records; marriage certificates; records of state or provincial bureaus of vital statistics; historical society records; adoption agency records; welfare certifications; certified results of paternity tests; family bibles; journals; books and newspapers, magazines and other periodicals.
 - 6.3.2.2 The Committee is under no obligation to consider any single document as dispositive, unless the document is deemed to be authentic and no other documents to the contrary have been produced.
- 6.3.3. Every application for enrollment under the provisions of Section 4.1.2, above, based on a claim of adoption into the Modoc Tribe in accordance with ancient Modoc tradition, must be supported by:
 - 6.3.3.1 a legible copy of a notarized, sworn affidavit signed by the applicant setting forth the name of the Modoc person who adopted the applicant, the date of the adoption, and the circumstances under which the adoption took place;
 - 6.3.3.2 documents described in Section 6.3.2, above, evidencing the Modoc ancestry of the person who adopted the applicant;

- 6.3.3.3 a legible copy of the notarized, sworn affidavit of at least one (1) person who witnessed the adoption or other facts attesting to the adoption; and, if provided by the applicant;
- 6.3.3.4 such other evidence as the Committee may accept as legitimate, material and relevant to its evaluation of the application.
- 6.3.4 Every application under the provisions of Section 4.1.3, above, for enrollment of a minor who, in accordance with the statutes of the United States or any other nation state recognized by the United Nations and/or their respective states and provinces, has been adopted by one or more parents, who are themselves citizens of the Modoc Nation, must be supported by an a legible copy of a certified copy of the certificate of adoption or equivalent record issued by the governmental entity recognizing the adoption.
- 6.3.5 Every application for enrollment under the provisions of Section 4.1.4, above, based upon completion of the process of naturalization, must be supported by:
 - 6.3.5.1 a legible copy of the notarized, sworn affidavit signed by the applicant setting forth with particularity the manner in which the applicant has taken part in and contributed to the affairs and functions of the Modoc Nation during the two (2) consecutive years immediately prior to applicant's application, as provided in Section 4.5.2.1, above;
 - 6.3.5.2 legible copies of the notarized, sworn affidavits of at least two (2) citizens of the Modoc Nation, verifying the statements set forth in the applicant's affidavit described in Section 6.3.5.1, above; and
 - 6.3.5.3 a legible copy of the certified test result showing that the applicant has passed the test taken after completion of a course of study titled: "Modoc Legacy: a Guide to Understanding Modoc History and Culture."

Section 7. Enrollment Procedure, Decisions and Reapplication after Denial

7.1 Receipt of Application.

- 7.1.1 All application forms and supporting documents shall be filed with the Committee at the Modoc Nation's office in person, by postal mail, or by transmission over the Internet by such means as online filing or email with the necessary forms and supporting documents included as attachments. The Committee or Enrollment Staff shall stamp all application forms with the date on which they are received.
- 7.1.2 Within thirty (30) days printed copies shall be made of all applications and supporting documents and the originals of any supporting documents, if any were provided, returned to the applicant, either in person or by mailing them to the applicant's address as shown on the application. The applicant shall notify the Citizenship Committee in writing of any change in address.

7.2 Review and Evaluation of Application – Actions Taken by Committee.

- 7.2.1 As soon as reasonably possible, but no later than one hundred eighty (180) days from the date an application for enrollment is received, the Committee shall review and evaluate the application and take one of the following actions:

- 7.2.1.1 Notify the applicant in writing that his or her application for enrollment has been approved. The notice shall include a Certificate of Citizenship setting forth the date of enrollment and the citizen's enrollment number on the Tribal Roll and instructions informing the new citizen as to how to obtain a wallet-size laminated Citizenship Card that can serve as official tribal identification;
 - 7.2.1.2 Notify the applicant in writing that his or her application for enrollment has been denied. A *Notice of Denial* may also include a supplemental finding that the application is fraudulent, frivolous, and/or filed in bad faith. Any *Notice of Denial* shall be mailed to the applicant's last known address by certified mail, return receipt requested, and set forth the reasons for the denial. The notice shall also inform the applicant of his or her right to appeal to the Legislative Council within thirty (30) days of receipt of the notice and include instructions as to how to file such an appeal. The notice shall inform the applicant that failure to file an appeal within the thirty (30) day time period for doing so will make the Committee's decision final and unappealable. The notice shall also inform the applicant that the hearing and determination of the Legislative Council will establish the factual record for any subsequent action on the application;
 - 7.2.1.3 Notify the applicant in writing that further information or evidence must be supplied in support of the application. Such notice shall grant the applicant thirty (30) days within which to provide the requested information. If the applicant fails to do so within the time provided, the Committee shall issue a letter denying the application for enrollment; or
 - 7.2.1.4 Notify the applicant in writing that the matter of applicant's enrollment is being set for hearing by the Committee. Such notice shall set the date for such hearing no sooner than thirty (30) days and no later than ninety (90) days from the date of the notice. There shall be no right to counsel in this hearing for either the applicant or the Committee.
 - 7.2.1.5 Notify the applicant for enrollment by naturalization that he or she is being placed on a waiting list of other similarly situated applicants, said list being ordered according to the date of application. Such notice shall inform the applicant that his or her application shall be granted when such application rises to first on the aforesaid waiting list, and the enrollment of said applicant will not cause the number of naturalized citizens on the Tribal Roll to exceed ten percent (10%) of the total number of citizens enrolled in the Modoc Nation, as provided in Subsection 4.6, above.
- 7.3 Date Rights of Citizenship Become Effective. A person enrolled by the Citizenship Committee, or otherwise by operation of this Code, shall be entitled to exercise the rights and privileges of citizenship in the Modoc Nation effective as of the date of enrollment.
- 7.4 Reapplication for Enrollment Based on the Discovery of New Evidence.
- 7.4.1 Any person who has applied for enrollment and been denied may reapply only upon the presentation of newly discovered, substantial, credible evidence that is material to the application, which the applicant could not with reasonable diligence have discovered and given to the Committee at the time of previous application.

- 7.4.2 The Committee shall provide such persons who request to reapply under this Subsection, a form titled *Reapplication for Enrollment Based on the Discovery of New Evidence* that, in addition to the elements set forth in Subparagraph 6.2.2, above, has space for the applicant to provide the following information:
- 7.4.2.1 a detailed description of the newly discovered evidence that the applicant believes qualifies him or her for enrollment;
 - 7.4.2.2 a statement indicating why the newly discovered evidence is substantial, credible and material to applicant's qualification for enrollment;
 - 7.4.2.3 the date the evidence was discovered and the circumstances that resulted in its discovery; and
 - 7.4.2.4 a statement indicating why the applicant could not with reasonable diligence have discovered the evidence at the time of previous application.
- 7.4.3 Any person who reapplies under this Subsection shall file a *Reapplication for Enrollment Based on the Discovery of New Evidence* form containing all the elements and information set forth in Paragraph 7.4.2, above, in the manner provided in Paragraph 7.1.1, above. The application shall not be accepted for filing unless it includes originals or legible and complete copies of the documents that constitute the newly discovered evidence. It shall not be necessary for the applicant to again provide the supporting documents that accompanied the applicant's previous application for enrollment. With this exception, all of the provisions of Section 6 and Subsections 7.1 through 7.3 shall apply.

Section 8. Voluntary Disenrollment and Subsequent Re-enrollment

- 8.1 **Who May File.** An application for voluntary disenrollment may be filed by any adult citizen who no longer wishes to be a citizen of the Modoc Nation. An application for a minor or incompetent citizen may be filed by his or her parent/s, next of kin, legal guardian, or other person legally responsible for the applicant's care and well-being.
- 8.2 **Protection of Minors and Incompetent Persons.** No application for voluntary disenrollment of a minor or incompetent citizen shall be granted unless the Committee is satisfied that the applicant minor or incompetent citizen has been or will be enrolled in another native nation, tribe or band immediately following his disenrollment from the Modoc Nation.
- 8.3 **Application by an Adult Citizen.** The Committee, upon personal or written request, shall make available to any adult citizen a form by which said citizen can apply for voluntary disenrollment as a citizen in the Modoc Nation. The form shall contain space for the following information and shall not be considered completed, unless all the blanks are properly filled with the required information:
- 8.3.1 the name of the applicant;
 - 8.3.2 the enrollment number of the applicant on the Tribal Roll;
 - 8.3.3 the applicant's current mailing address, telephone number and email address (unless applicant has no telephone or email address);

- 8.3.4 a statement indicating whether the applicant has applied for or been granted enrollment in another native nation, tribe or band, and, if so, the name of such native nation, tribe or band;
 - 8.3.5 A statement setting forth any other reason the applicant may have for seeking voluntary disenrollment;
 - 8.3.6 a statement affirming that the applicant is seeking voluntary disenrollment of his or her own free will and is under no duress or coercion of any kind to seek voluntary disenrollment;
 - 8.3.7 a statement affirming that the applicant understands that effective upon the date of applicant's disenrollment, he or she shall no longer receive or enjoy any rights, privileges or benefits that accrue to citizens of the Modoc Nation;
 - 8.3.8 a statement affirming that all of the statements and information set forth in the application are true, complete and correct to the best of the applicant's knowledge and are made in good faith;
 - 8.3.9 the signature of the applicant and the date of the applicant's signature; and
 - 8.3.10 the signature of a witness to the applicant's signature and the date of the witness' signature.
- 8.4 Application by a Minor or Incompetent Citizen. The Committee, upon personal or written request, shall make available to any adult parent, next of kin, legal guardian or other person legally responsible for the care and well-being of a minor or incompetent citizen a form by which such minor or incompetent person can apply for voluntary disenrollment as a citizen in the Modoc Nation.
- 8.4.1 In addition to the information required in Subsection 8.3, above, the form shall contain space for:
 - 8.4.1.1 the name of the person filing the application, the person's relationship to the applicant (parent, next of kin, legal guardian or other legal capacity), and the current mailing address, telephone number and email address of such person (unless he or she has no telephone or email address); and
 - 8.4.1.2 a statement authorizing the Committee to verify the applicant's enrollment or contingent enrollment in another native nation, tribe or band, and the contact information for the Enrollment Department or its equivalent in such other nation, tribe or band.
 - 8.4.2 Such application shall be accompanied by an official certification, resolution, or other satisfactory proof issued by another native nation, tribe or band establishing that the minor or incompetent person is relinquishing his or her citizenship in the Modoc Nation in order to permit the enrollment of such citizen in such other native nation, tribe or band.
- 8.5 Voluntary Disenrollment Procedure.
- 8.5.1 All applications for voluntary disenrollment and supporting documents shall be filed with the Committee at the Modoc Nation's office in person, by postal mail, or by transmission over the Internet by such means as online filing or email with the necessary forms and supporting documents included as attachments. The Committee or Enrollment Staff shall stamp all application forms with the date on which they are received.

- 8.5.2 As soon as reasonably possible, but no later than ten (10) days from the date an application for voluntary disenrollment is received, the Committee shall review the application and take one of the following actions:
- 8.5.2.1 Notify the applicant in writing that his or her application for voluntary disenrollment has been granted and shall become effective with the removal of the applicant's name from the Tribal Roll ten (10) days after applicant's receipt of said notice. Such notification shall be mailed to the applicant's last known address by certified mail, return receipt requested. The applicant shall have the right to withdraw his or her application for voluntary disenrollment at any time during the ten (10) days between receipt of notification and the actual removal of his or her name from the Tribal Roll, provided, however, that such withdrawal is in writing, includes the applicant's signature verified by the signature of a witness, and is received by the Committee prior to the expiration of the ten (10) day time period described in this Subparagraph;
 - 8.5.2.2 Notify in writing the parent, next of kin, legal guardian or other person legally responsible for the care and well-being of a minor or incompetent citizen that said citizen's application for voluntary disenrollment has been denied on the ground that the application has failed to establish that the minor or incompetent citizen has been or will be enrolled in another native nation, tribe or band. The Notice of Denial may also include a supplemental finding that the application is fraudulent, frivolous, and/or filed in bad faith. Such notice shall be mailed to the applicant's last known address by certified mail, return receipt requested. The notice shall also inform the applicant of his or her right to appeal to the Legislative Council within thirty (30) days of receipt of the notice and include instructions as to how to file such an appeal. The notice shall inform the applicant that failure to file an appeal within the thirty (30) day time period for doing so will make the Committee's decision final and unappealable. The notice will also inform the applicant that the hearing and determination of the Legislative Council will establish the factual record for any subsequent action on the application; or
 - 8.5.2.3 Notify the applicant in writing that the matter of applicant's voluntary disenrollment is being set for hearing by the Committee. Such notice shall set the date for such hearing no sooner than thirty (30) days and no later than ninety (90) days from the date of the notice. There shall be no right to counsel in this hearing for either the applicant or the Committee.

8.6 Re-enrollment Subsequent to Voluntary Disenrollment.

- 8.6.1 A person who has voluntarily relinquished his or her citizenship in the Modoc Nation may file an application for re-enrollment. The Committee will not consider or act on an application for re-enrollment until the expiration of a one-year (1-year) waiting period, measured from the date that such an application is filed.
- 8.6.2 An applicant for re-enrollment shall file an enrollment application as provided in Subsections 6.1 and 6.2, above, in the manner provided in Paragraph 7.1.1, above. With the exception of Subsection 6.3 regarding the filing of supporting documents, all the provisions of Section 6 and Subsections 7.1 through 7.3 shall apply.

Section 9. Involuntary Revocation of Enrollment

- 9.1 Grounds for Revocation. No citizen of the Modoc Nation shall have his or her citizenship revoked against his or her will except on one or more of the following grounds:
- 9.1.1 Fraudulent misrepresentation of any fact, statement, supporting document or other evidence submitted to the Committee with respect to: an application for enrollment; a reapplication for enrollment based on the discovery of new evidence; an application for voluntary disenrollment; or an application for re-enrollment subsequent to voluntary disenrollment in the Modoc Nation;
 - 9.1.2 False or misleading testimony given or evidence presented by the person in a hearing before the Committee on any matter set forth in Paragraphs 3.3.4 or 3.3.5, above;
 - 9.1.3 The discovery that the person has retained, enrolled in or obtained citizenship in another native nation, tribe or band; and/or
 - 9.1.4 Error; provided that no person on the Tribal roll on the effective date of this Code shall have his or her citizenship revoked for error, and provided further, that no person shall lose his or her citizenship for error if five (5) years have passed since the date of his or her enrollment as a tribal member.
- 9.2 Revocation Petition – Designation of Parties, Contents and Filing.
- 9.2.1 Any adult citizen of the Modoc Nation may file a petition for the involuntary revocation of another citizen's enrollment in the Nation. The Committee may also initiate a revocation proceeding *sua sponte*, on its own initiative. In either case, the party filing the petition shall be designated as the "Petitioner." The citizen against whom such a petition is filed shall be designated as the "Respondent."
 - 9.2.2 The Committee, upon personal or written request, shall make available to any adult citizen of the Modoc Nation a form by which said citizen can petition for the involuntary revocation of another citizen's enrollment.
 - 9.2.3 All petitions for involuntary revocation of enrollment, whether filed by a citizen-petitioner or initiated by the Committee *sua sponte*, shall include the following minimum elements and shall not be considered completed, unless all the blanks are properly filled with the required information:
 - 9.2.3.1 the name of the Petitioner and his or her current mailing address, telephone number and email address (unless Petitioner has no telephone or email address);
 - 9.2.3.2 the name of the citizen for whom the Petitioner is seeking involuntary revocation;
 - 9.2.3.3 Respondent's Tribal Roll number, current mailing address, telephone number and email address (unless Respondent has no telephone or email address); to the extent necessary, the Committee or the Enrollment Staff shall provide a citizen-petitioner with the information required by this Subparagraph;
 - 9.2.3.4 the ground or grounds upon which the petition for involuntary revocation is based;
 - 9.2.3.5 a statement of the facts that support each ground listed as a basis for the petition;
 - 9.2.3.6 any documents or other evidence supporting the facts and grounds set forth in the petition which Petitioner may have;

- 9.2.3.7 an oath or affirmation made under penalty of “false swearing,” as that term is defined in Section 2, above, that all of the statements set forth in the petition and documents and evidence submitted by the Petitioner in support of the petition are true, complete and accurate to the best of the Petitioner’s knowledge and are made in good faith;
 - 9.2.3.8 the signature of the Petitioner and the date of the Petitioner’s signature;
 - 9.2.3.9 the signature of a witness to the Petitioner’s signature and the date of the witness’ signature; and
 - 9.2.3.10 if the Petitioner is the Committee acting *sua sponte*, the petition shall be signed by those members of the Committee who voted in favor of issuing the petition.
- 9.2.4 Every *Petition for Involuntary Revocation of Enrollment* shall be filed with the Legislative Council at the Modoc Nation’s office in person, by postal mail, or by transmission over the Internet by such means as online filing or email with the necessary forms and supporting documents included as attachments. The Secretary of the Legislative Council or the Secretary’s Staff shall stamp all such petitions with the date on which they are received.

9.3 Notice of Petition, Written Response, Notice of Hearing – Time Limits.

- 9.3.1 All notices and responses required by this Subsection shall be served by and filed with the Secretary of the Legislative Council.
- 9.3.2 Within ten (10) days of the filing of a *Petition for Involuntary Revocation of Enrollment* by a citizen-petitioner, the Secretary of the Legislative Council shall provide a copy of the petition and any supporting documents to the Citizenship Committee. Within thirty (30) days of its receipt of these documents, the Committee shall provide to the Legislative Council a written report of its evaluation, findings and recommendations as to the disposition of the *Petition*.
- 9.3.3 Within ten (10) days of the filing of a *Petition for Involuntary Revocation of Enrollment*, the Secretary of the Legislative Council shall serve upon the Respondent, either by verified personal service or by certified mail, return receipt requested, the following documents:
 - 9.3.3.1 a copy of the petition and any documents or evidence in support of the petition;
 - 9.3.3.2 notice of the Respondent’s right to file with the Secretary of the Legislative Council a written response to the petition and its supporting documents within thirty (30) days of Respondent’s receipt thereof; and
 - 9.3.3.3 a brief description of the hearing procedure set forth in Subsection 9.5, below.
- 9.3.4 The Secretary of the Legislative Council shall stamp the Respondent’s written response, if any is received, with the date of its receipt and mail a copy to the Petitioner by certified mail, return receipt requested. If the Petitioner is the Committee acting *sua sponte*, the Secretary of the Legislative Council shall provide the Committee with Respondent’s written response by personal service or through the Modoc Nation government’s internal mail delivery system.
- 9.3.5 Within ten (10) days of its receipt of Respondent’s written response, if any is received, to a *Petition for Involuntary Revocation of Enrollment* filed by a citizen-petitioner, the Secretary of the Legislative Council shall provide a copy of the Respondent’s written response to the Citizenship Committee. Within thirty (30) days of its receipt of such response, the

Committee shall provide to the Legislative Council a written report of its evaluation and findings regarding Respondent's written response and the Committee's recommendations as to the disposition of the petition.

9.3.6 A hearing on the petition shall be held no fewer than sixty (60) days nor more than ninety (90) days from the Legislative Council's receipt of Respondent's written response or, if the Respondent fails to file a written response, from the expiration of the thirty (30) day time period allowed for response in Subparagraph 9.3.3.2, above. Notice of the hearing shall be sent to both the Petitioner and Respondent by certified mail, return receipt requested, no fewer than thirty (30) days prior to the hearing. If the Petitioner is the Committee acting *sua sponte*, the Secretary of the Legislative Council may provide the Committee with notice of the hearing by personal service or through the Modoc Nation government's internal mail delivery system.

9.4 Forum for Hearing. The hearing of a *Petition for Involuntary Revocation of Enrollment* shall take place before the Legislative Council in accordance with the provisions set forth in Subsection 9.5, below.

9.5 Procedure for Hearing.

9.5.1 No member of the Legislative Council shall participate in the hearing of any *Petition for Involuntary Revocation of Enrollment* that involves a member of his or her "immediate family," as that term is defined in Section 2, above. The non-participation of a member of the Council because of such a conflict of interest shall not deprive the Council of a quorum necessary to conduct the hearing.

9.5.2 The hearing shall be open to citizens of the Nation; *provided*, however, that no member of the audience shall be permitted to speak or ask questions unless called upon to do so by the Speaker. The Speaker shall have the authority to order the removal of any member of the audience who, in the sole judgment of the Speaker, has become disruptive to the orderly conduct of the hearing. The hearing may be ordered closed at the discretion of the Speaker of the Legislative Council when, in his or her judgment, the decorum of the audience has become prejudicial to the orderly conduct of the hearing. In the event the hearing is held in *executive session*, the vote to determine whether the *Petition for Involuntary Revocation of Enrollment* is granted or denied shall take place in an open meeting.

9.5.3. The hearing shall be video recorded and permanently maintained on media from which a transcript can be produced.

9.5.4 Both the Petitioner and Respondent shall have the right to be represented by counsel of their choice at their own expense.

9.5.5 The Legislative Council may consult with its own legal counsel on any legal question or matter that arises during the hearing; *provided*, however, that such consultation shall take place in open hearing.

9.5.6 As provided in Section 5, above, the burden of proof shall be upon the Petitioner, and the evidentiary standard to be used for determining a *Petition for Involuntary Revocation of Enrollment* shall be "clear and convincing evidence," as that term is defined in Section 2, above.

9.5.7 Both parties shall be allowed to subpoena records and the testimony of favorable or hostile witnesses, and to cross examine the other party's witnesses. A subpoena may be

challenged by a *Motion to Quash* on any of the following grounds: that it is irrelevant, or immaterial, or too vague, or overly broad, or seeks privileged and/or confidential information, or would result in burdensome travel or expense, or that there is inadequate time to respond, or would impose an undue burden or hardship on the opposing party.

- 9.5.8 Formal rules of evidence need not be followed in the conduct of the hearing, *provided*, however, that either party may object to testimony or evidence on the grounds that it is irrelevant and/or hearsay.
- 9.5.9 If testimony or evidence is introduced that one of the parties could not have anticipated through the exercise of reasonable diligence, the Legislative Council may grant the aggrieved party's motion for a continuance or postponement of the hearing on the ground of "surprise."
- 9.5.10 The Speaker of the Legislative Council may, at his or her discretion, call a recess at any time, or grant a motion to continue or postpone a hearing upon a showing of reasonable cause by either party.

9.6 Decision and Notice of Right to Appeal.

- 9.6.1 The Legislative Council shall consider all relevant testimony and evidence and determine the disposition of the *Petition for Involuntary Revocation of Enrollment* by a majority vote of its members. No member may abstain from voting on the disposition of the petition unless he or she was not present during the hearing.
- 9.6.2 The Legislative Council may announce its decision immediately at the end of the hearing, or it may be deliberate upon the testimony and evidence for no more than thirty (30) days before announcing its decision.
- 9.6.3 Within ten (10) days from the date the decision is announced, the Secretary of the Legislative Council shall serve on both parties a written *Decision of the Legislative Council on a Petition for Involuntary Revocation of Enrollment* by verified personal service, or by certified mail. The *Decision* shall include the following information:
- 9.6.3.1 the names and designation of the parties as Petitioner and Respondent;
- 9.6.3.2 the decision to grant or deny the *Petition for Involuntary Revocation of Enrollment*;
- 9.6.3.3 the ground/s upon which the decision is based and a statement of the facts relied upon to make the decision;
- 9.6.3.4 the names of the members of the Legislative Council who voted and whether their votes were to grant or deny the petition;
- 9.6.3.5 notice that the losing party has ten (10) days from the date of his, her, or its receipt of the decision to file a *Notice of Intent to Appeal an Adverse Decision of the Legislative Council on a Petition for Involuntary Revocation of Enrollment*; an instruction that the *Notice of Intent to Appeal* must be filed with the Office of the Secretary of the Legislative Council at the Modoc Nation's office in person or by certified mail, return receipt requested; and the following statement in large, bold type: "FAILURE TO FILE THE ENCLOSED NOTICE OF INTENT TO APPEAL WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS DECISION SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO APPEAL, CAUSING THIS DECISION TO BECOME FINAL AND UNAPPEALABLE";

9.6.3.6 notice that the losing party has thirty (30) days from the date of his, her, or its receipt of the decision to file an appeal to the Circuit Court of the Modoc Nation and the following statement in large, bold type: "FAILURE TO FILE AN APPEAL OF THIS ADVERSE DECISION WITH THE CIRCUIT COURT OF THE MODOC NATION WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS DECISION SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO APPEAL, CAUSING THIS DECISION TO BECOME FINAL AND UNAPPEALABLE";and

9.6.3.7 the signatures of the Speaker of the Legislative Council and the Secretary of the Council and the dates of said signatures.

9.7 Ten (10) Day Notice of Intent to Appeal. Enclosed with the *Decision of the Legislative Council on a Petition for Involuntary Revocation of Enrollment* described and served on the losing party pursuant to Paragraph 9.6.3, above, shall be a copy of a *Notice of Intent to Appeal an Adverse Decision of the Legislative Council on a Petition for Involuntary Revocation of Enrollment*, ready for completion by the losing party. The form shall include the following statement in large, bold type: "FAILURE TO FILE THIS NOTICE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS DECISION SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO APPEAL CAUSING THIS DECISION TO BECOME FINAL AND UNAPPEALABLE."

9.8 Thirty (30) Day Time Limit to Appeal to the Circuit Court. The losing party shall have thirty (30) days from the date of his, her, or its receipt of the *Decision of the Legislative Council on a Petition for Involuntary Revocation of Enrollment* to file an appeal to the Circuit Court of the Modoc Nation. The appeal shall be adjudicated in accordance with the judicial appeals provisions set forth in Section 11, below. However, if the losing party fails to file in a timely manner the *Notice of Intent to Appeal an Adverse Decision of the Legislative Council on a Petition for Involuntary Revocation of Enrollment*, as provided in Subsection 9.7, above, or fails to file a timely appeal to the Circuit Court of the Modoc Nation, the decision of the Legislative Council shall become final and unappealable.

9.9 Finality of Decision and Removal of Name from Tribal Roll. When the Legislative Council has granted a *Petition for Involuntary Revocation of Enrollment*, and the Respondent has either failed to exercise his or her right to appeal such decision or has exhausted his or her rights to appeal, the decision shall become final, and the Committee shall remove Respondent's name from the Tribal Roll.

9.10 Two (2) Year Waiting Period to Reapply for Enrollment. The Committee shall not accept a reapplication for citizenship for any person whose citizenship has been revoked under this Section for a period of two years from the date his or her name is removed from the Tribal Roll.

9.11 Penalty for False Swearing – Finding, Order of Assessment and Appeal.

9.11.1 In any case governed by this Section in which the Legislative Council determines that a Petitioner has engaged in "false swearing," as that term is defined in Section 2, above, it shall serve upon the Petitioner by verified personal service or by certified mail, return receipt requested, an *Order of Assessment Imposing a Penalty for False Swearing*, assessing a civil penalty in an amount not to exceed ten thousand dollars (\$10,000). The notice shall include the following elements:

9.11.1.1 the name and last known physical and mailing addresses of the Petitioner;

9.11.1.2 the amount of the penalty being assessed against the Petitioner;

- 9.11.1.3 a specific description of the facts upon which the finding of “false swearing” is based;
 - 9.11.1.4 the names of the members of the Legislative Council who voted and whether their votes were in favor or against the finding of “false swearing;”
 - 9.11.1.5 notice that the Petitioner has ten (10) days from the date of his or her receipt of the order to file a *Notice of Intent to Appeal an Order of Assessment Imposing a Penalty for False Swearing*; an instruction that the *Notice of Intent to Appeal* must be filed with the Office of the Secretary of the Legislative Council at the Modoc Nation’s office in person or by certified mail, return receipt requested; and the following statement in large, bold type: “FAILURE TO FILE THE ENCLOSED NOTICE OF INTENT TO APPEAL WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS ORDER OF ASSESSMENT IMPOSING A PENALTY FOR FALSE SWEARING SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO APPEAL, CAUSING THIS ORDER OF ASSESSMENT TO BECOME FINAL AND UNAPPEALABLE”;
 - 9.11.1.6 notice that the Petitioner has thirty (30) days from the date of his or her receipt of the *Order of Assessment Imposing a Penalty for False Swearing* to file an appeal to the Circuit Court of the Modoc Nation and the following statement in large, bold type: “FAILURE TO FILE AN APPEAL OF THIS ORDER OF ASSESSMENT IMPOSING A PENALTY FOR FALSE SWEARING WITH THE CIRCUIT COURT OF THE MODOC NATION WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS ORDER SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO APPEAL, CAUSING THIS ORDER OF ASSESSMENT TO BECOME FINAL AND UNAPPEALABLE”; and
 - 9.11.1.7 the signatures of the Speaker of the Legislative Council and the Secretary of the Council and the dates of said signatures.
- 9.12 Ten (10) Day Notice of Intent to Appeal. Enclosed with the *Order of Assessment Imposing a Penalty for False Swearing* described and served on the Petitioner pursuant to Paragraph 9.11, above, shall be a copy of a *Notice of Intent to Appeal an Order of Assessment Imposing a Penalty for False Swearing*, ready for completion by the Petitioner. The form shall include the following statement in large, bold type: “FAILURE TO FILE THIS NOTICE WITHIN TEN (10) DAYS OF YOUR RECEIPT THEREOF SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO APPEAL CAUSING THIS ORDER OF ASSESSMENT TO BECOME FINAL AND UNAPPEALABLE.”
- 9.13 Thirty (30) Day Time Limit to Appeal to the Circuit Court. The Petitioner shall have thirty (30) days from the date of his or her receipt of the *Order of Assessment Imposing a Penalty for False Swearing* to file an appeal to the Circuit Court of the Modoc Nation. The appeal shall be adjudicated in accordance with the judicial appeals provisions set forth in Section 11, below. However, if the Petitioner fails to file in a timely manner the *Notice of Intent to Appeal an Order of Assessment Imposing a Penalty for False Swearing*, as provided in Subsection 9.12, above, or fails to file a timely appeal to the Circuit Court of the Modoc Nation, the Order of Assessment Imposing a Penalty for False Swearing issued by the Legislative Council shall become final and unappealable.
- 9.14 Special Provisions Treating False Swearing by the Citizenship Committee. Subsections 9.11 through 9.13 shall not apply to the Citizenship Committee when it is designated as the “Petitioner” in the filing and hearing of its *sua sponte Petition for Involuntary Revocation of Enrollment*. Instead, the Legislative Council shall submit the matter of alleged false swearing to the Nation’s Attorney General, who shall make a prompt and thorough investigation of the matter, and, if in his or her

judgment the situation warrants, charge and prosecute the offending member or members of the Committee under the appropriate statutes set forth in the *Criminal Code of the Modoc Nation*. Any member of the Committee against whom such charges are filed shall be suspended without pay or benefits until such time he or she is exonerated, at which time he or she shall be reinstated with back pay and benefits. Any member convicted of a misdemeanor as a result of the operation of this Subsection shall be removed from office and not be allowed to serve in the Nation's government for a period of five (5) years from the date of conviction. Pursuant to Article 17, Section 6, Paragraph (a) of the Constitution of the Modoc Nation, any member convicted of a felony as a result of the operation of this Subsection shall be removed from office and shall not be allowed to serve in the Nation's government unless and until he or she receives a pardon.

Section 10. Appeals to the Legislative Council

- 10.1 **List of Appealable Decisions.** The following adverse decisions by the Citizenship Committee may be appealed to the Legislative Council:
 - 10.1.1 Notice of Denial of an application for enrollment, *provided*, however, that a decision to deny an application for enrollment by naturalization is unappealable pursuant to Paragraph 4.5.1;
 - 10.1.2 Notice of Denial of a reapplication for enrollment based on the discovery of new evidence;
 - 10.1.3 Notice of Denial of an application for voluntary disenrollment of a minor or incompetent person; and
 - 10.1.4 Notice of Denial of an application for re-enrollment subsequent to voluntary disenrollment.
- 10.2 **Designation of Parties.** For purposes of this Section, the person filing an appeal shall be designated as the "Appellant." The Citizenship Committee shall be designated as the "Respondent."
- 10.3 **Effect of Failure to File Timely Appeal.** The Legislative Council shall not accept for filing or hear any appeal from an adverse decision of the Committee that is presented after the thirty (30) day time period set forth in the Committee's notice of decision served on the Applicant, has expired. Failure to meet this deadline for filing of an appeal shall make the decision of the Committee final and unappealable, as provided in Subparagraphs 7.2.1.2 and 8.5.2.2 and as incorporated in Paragraphs 7.4.3 and 8.6.2.
- 10.4 **When an Appeal Bond is Required.**
 - 10.4.1 The Legislative Council shall not accept for filing or hear any appeal from an adverse decision of the Committee in which the Committee has made a supplemental finding that an application or reapplication for enrollment is fraudulent, frivolous, and/or filed in bad faith, as provided in Subparagraphs 7.2.1.2 and 8.5.2.2 and as incorporated in Paragraphs 7.4.3 and 8.6.2, unless the appeal is accompanied by a cashier's check or a bond in the amount of five hundred dollars (\$500) made payable to the Modoc Nation.
 - 10.4.2 Such cashier's check or bond shall be held in a special escrow account and returned to the Appellant only if the Legislative Council or, by further appeal, the Circuit Court or Supreme Court of the Modoc Nation reverses the supplemental finding of the Committee that the application or reapplication that has been denied is fraudulent, frivolous and/or filed in bad faith.

10.5 Filing of Appeal and Notice of Hearing.

- 10.5.1 All appeals under this Section shall be filed with the Office of the Secretary of the Legislative Council at the Modoc Nation's office in person or by certified mail, return receipt requested. The appeal shall include a complete copy of the decision being appealed along with any ancillary documents that were attached to or included with the decision. The Secretary or Secretary's Staff shall stamp the appeal with the date on which it is received and filed, and immediately serve a copy of the appeal on the Respondent (Citizenship Committee) by personal service or through the Modoc Nation government's internal mail delivery system.
- 10.5.2 Within thirty (30) days of receipt of service of the appeal, the Respondent shall provide the Office of the Secretary of the Legislative Council with copies of all the documents related to the decision that has been appealed. The Respondent may also file at the same time a written response to Appellant's appeal, provided, however, that a copy of any such response shall include proof of service of a copy of the response on the Appellant.
- 10.5.3 A hearing on the appeal shall be held no fewer than sixty (60) days nor more than ninety (90) days from the expiration of the thirty (30) day time period set forth in Paragraph 10.5.2, above. Notice of the hearing shall be sent to both the Appellant and Respondent no fewer than thirty (30) days prior to the hearing. Such notice shall be sent to the Appellant by certified mail, return receipt requested, and to the Respondent by personal service or through the Modoc Nation government's internal mail delivery system.

10.6 Procedure for Hearing of the Appeal.

- 10.6.1 No member of the Legislative Council shall participate in the hearing of any appeal that involves a member of his or her "immediate family," as that term is defined in Section 2, above. The non-participation of a member of the Council because of such a conflict of interest shall not deprive the Council of a quorum necessary to conduct the hearing.
- 10.6.2 The hearing shall be open to citizens of the Nation; *provided*, however, that no member of the audience shall be permitted to speak or ask questions unless called upon to do so by the Speaker. The Speaker shall have the authority to order the removal of any member of the audience who, in the sole judgment of the Speaker, has become disruptive to the orderly conduct of the hearing. The hearing may be ordered closed at the discretion of the Speaker of the Legislative Council when, in his or her judgment, the decorum of the audience has become prejudicial to the orderly conduct of the hearing. In the event the hearing is held in *executive session*, the vote to determine the disposition of the appeal shall take place in an open meeting.
- 10.6.3 The hearing shall be video recorded and permanently maintained on media from which a transcript can be produced.
- 10.6.4 Both the Appellant and Respondent shall have the right to be represented by counsel of their choice at their own expense.
- 10.6.5 The Legislative Council may consult with its own legal counsel on any legal question or matter that arises during the hearing; *provided*, however, that such consultation shall take place in open hearing.
- 10.6.6 As provided in Section 5, above, the burden of proof shall be upon the Appellant, and the evidentiary standard to be used for determining the disposition of an appeal of the

Committee's decision shall be a "preponderance of evidence," as that term is defined in Section 2, above.

- 10.6.7 Both parties shall be allowed to subpoena records and the testimony of favorable or hostile witnesses, and to cross examine the other party's witnesses. A subpoena may be challenged by a *Motion to Quash* on any of the following grounds: that it is irrelevant, or immaterial, or too vague, or overly broad, or seeks privileged and/or confidential information, or would result in burdensome travel or expense, or that there is inadequate time to respond, or would impose an undue burden or hardship on the opposing party.
- 10.6.8 Formal rules of evidence need not be followed in the conduct of the hearing, provided, however, that either party may object to testimony or evidence on the grounds that it is irrelevant and/or hearsay.
- 10.6.9 If testimony or evidence is introduced that one of the parties could not have anticipated through the exercise of reasonable diligence, the Legislative Council may grant the aggrieved party's motion for a continuance or postponement of the hearing on the ground of "surprise."
- 10.6.10 The Speaker of the Legislative Council may, at his or her discretion, call a recess at any time, or grant a motion to continue or postpone a hearing upon a showing of reasonable cause by either party.

10.7 Decision and Notice of Right to Appeal.

- 10.7.1 The Legislative Council shall consider all relevant testimony and evidence and determine the disposition of the appeal by a majority vote of its members. No member may abstain from voting on the disposition of the appeal unless he or she was not present during the hearing.
- 10.7.2 The Legislative Council may announce its decision immediately at the end of the hearing, or it may be deliberate upon the testimony and evidence for no more than thirty (30) days before announcing its decision.
- 10.7.3 Within ten (10) days from the date the decision is announced, the Secretary of the Legislative Council shall serve on both parties a written *Decision of the Legislative Council on an Appeal from a Notice of Denial Issued by the Citizenship Committee* by verified personal service, or by certified mail. The *Decision* shall include the following information:
 - 10.7.3.1 the names and designation of the parties as Appellant and Respondent;
 - 10.7.3.2 the decision to uphold or reverse the *Notice of Denial* issued by the Respondent/Committee;
 - 10.7.3.3 the decision to uphold or reverse a supplemental finding in the *Notice of Denial* that an application or reapplication for enrollment is fraudulent, frivolous, and/or filed in bad faith;
 - 10.7.3.4 the ground/s upon which the decision is based and a statement of the facts relied upon to make the decision;
 - 10.7.3.5 the names of the members of the Legislative Council who voted and whether their votes were to uphold or reverse the *Notice of Denial* and/or a supplemental

finding in the *Notice of Denial* that an application or reapplication for enrollment is fraudulent, frivolous, and/or filed in bad faith;

10.7.3.6 notice that the losing party has ten (10) days from the date of his, her, or its receipt of the decision to file a *Notice of Intent to Appeal a Citizenship Decision of the Legislative Council*; an instruction that the *Notice of Intent to Appeal* must be filed with the Office of the Secretary of the Legislative Council at the Modoc Nation's office in person or by certified mail, return receipt requested; and the following statement in large, bold type: "FAILURE TO FILE THE ENCLOSED NOTICE OF INTENT TO APPEAL WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS DECISION SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO APPEAL, CAUSING THIS DECISION TO BECOME FINAL AND UNAPPEALABLE";

10.7.3.7 notice that the losing party has thirty (30) days from the date of his, her, or its receipt of the decision to file an appeal to the Circuit Court of the Modoc Nation and the following statement in large, bold type: "FAILURE TO FILE AN APPEAL OF THIS ADVERSE DECISION WITH THE CIRCUIT COURT OF THE MODOC NATION WITHIN THIRTY (30) DAYS OF YOUR RECEIPT OF THIS DECISION SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO APPEAL, CAUSING THIS DECISION TO BECOME FINAL AND UNAPPEALABLE";and

10.7.3.8 the signatures of the Speaker of the Legislative Council and the Secretary of the Council and the dates of said signatures.

10.8 Ten (10) Day Notice of Intent to Appeal. Enclosed with the *Decision of the Legislative Council on an Appeal from a Notice of Denial Issued by the Citizenship Committee* described and served on the losing party pursuant to Paragraph 10.7.3, above, shall be a copy of a *Notice of Intent to Appeal a Citizenship Decision of the Legislative Council*, ready for completion by the losing party. The form shall include the following statement in large, bold type: "FAILURE TO FILE THIS NOTICE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS DECISION SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO APPEAL CAUSING THIS DECISION TO BECOME FINAL AND UNAPPEALABLE.

10.9 Thirty (30) Day Time Limit to Appeal to the Circuit Court. The losing party shall have thirty (30) days from the date of his, her, or its receipt of the *Decision of the Legislative Council on an Appeal from a Notice of Denial Issued by the Citizenship Committee* to file an appeal to the Circuit Court of the Modoc Nation. The appeal shall be adjudicated in accordance with the judicial appeals provisions set forth in Section 11, below. However, if the losing party fails to file in a timely manner the *Notice of Intent to Appeal a Citizenship Decision of the Legislative Council*, as provided in Subsection 10.8, above, or fails to file a timely appeal to the Circuit Court of the Modoc Nation, the decision of the Legislative Council shall become final and unappealable.

Section 11. Appeals to the Circuit Court of the Modoc Nation

11.1 All Judicial Appeals Begin in the Circuit Court. All appeals from decisions of the Legislative Council taken pursuant to Sections 9 and 10, above, regarding matters of citizenship shall be filed with the Circuit Court of the Modoc Nation.

11.2 Limited Waiver of Nation's Sovereign Immunity. To the extent necessary for the hearing of appeals and issuing judgments under this Code, and as limited by this Code, the Modoc Nation hereby issues a limited waiver of its immunity from suit in the Circuit Court of the Modoc Nation.

- 11.3 Effect of Failure to File Timely Appeal. The Clerk of the Circuit Court shall not accept for filing, nor shall the Court hear any appeal from a decision of the Legislative Council that is presented after the thirty (30) day time period set forth in Subsections 9.8, 9.13 and 10.9, above, has expired.
- 11.4 When an Appeal Bond is Required.
- 11.4.1 The Clerk of the Circuit Court shall not accept for filing, nor shall the Court hear any appeal from a decision of the Legislative Council in which either of the following circumstances exist, unless the appeal is accompanied by a cashier's check or a bond in the amount of ten thousand dollars (\$10,000) made payable to the Modoc Nation:
- 11.4.1.1 The Legislative Council has upheld the Committee's supplemental finding that an application or reapplication for enrollment is fraudulent, frivolous, and/or filed in bad faith, as provided in Subparagraphs 7.2.1.2 and 8.5.2.2 and as incorporated in Paragraphs 7.4.3 and 8.6.2; or
- 11.4.1.2 The Legislative Council has granted a *Petition for Involuntary Revocation of Enrollment* on any of the grounds set forth in Paragraphs 9.1.1 through 9.1.3, above.
- 11.4.2 The cashier's check or bond required by Subsection 11.4.1, above, shall be held in a special escrow account and returned to the Appellant only if the Circuit Court or, by further appeal, the Supreme Court of the Modoc Nation reverses either of the decisions of the Legislative Council set forth in Subparagraphs 11.4.1.1 and 11.4.1.2, above.
- 11.5 List of Grounds for Appeal. The only grounds for appeal of a decision under this Section shall be:
- 11.5.1 That the Citizenship Committee and/or Legislative Council has violated the Constitution of the Modoc Nation or one or more provisions of this Code.
- 11.5.2 That the decision of the Legislative Council is unsupported by the facts.
- 11.6 Burden of Proof and Standard of Evidence.
- 11.6.1 In all appeals under this Section, there shall be a rebuttable presumption that the Legislative Council has acted fairly and that its decision is legally and factually correct. As provided in Section 5, above, the burden of proof to show otherwise shall be upon the Appellant. The evidentiary standard to be used is as follows:
- 11.6.1.1 for decisions concerning applications or reapplications for enrollment the standard shall be a "preponderance of evidence," as that term is defined in Section 2, above; and
- 11.6.1.2 for decisions concerning a *Petition for Involuntary Revocation of Enrollment*, including an *Order of Assessment Imposing a Penalty for False Swearing*, the standard shall be "clear and convincing evidence," as that term is defined in Section 2, above.
- 11.6.2 In making its decision on any appeal under this Section, the Court shall strictly construe the provisions of this Code.
- 11.7 Procedural Rules.
- 11.7.1 Appeals under this Section shall be tried by the Court; that is, no jury shall be allowed in such appeals.

- 11.7.2 The appeal shall not be tried *de novo*; that is, no new testimony or evidence shall be introduced. Rather, all arguments shall be based on the factual record created by the prior proceedings of the Citizenship Committee and/or the Legislative Council.
- 11.7.3 Proceedings in the appeal shall be governed by the *Rules of Civil Procedure in the Circuit Court of the Modoc Nation* enacted into law as provided by Article 11, Section 10 of the Constitution of the Modoc Nation.

11.8 Remedies.

- 11.8.1 With the exception of a finding of bad faith on the part of the Citizenship Committee and/or the Legislative Council, the only remedies available on appeal under this Section are declaratory and injunctive in nature. Money damages shall not be awarded.
- 11.8.2 In the event the Court finds that the Committee and/or the Legislative Council has acted in bad faith, the Court shall, in addition to declaratory and injunctive relief, order the Modoc Nation to pay the Appellant for any monetary tribal benefits he or she may have lost as a result of such bad faith, plus reasonable interest that would have accrued on the loss of such benefits.

11.9 Attorney Fees and Court Costs.

- 11.9.1 The Appellant shall forfeit the ten thousand dollar (\$10,000) cashier's check or bond filed on appeal pursuant to Subsection 11.4 to the extent necessary to pay all court costs, reasonable attorney fees, other costs of litigation and any *ad hoc* fee for the judge incurred by the Nation in defending against and hearing the appeal when the Court rules as follows:

- 11.9.1.1. to uphold a decision of the Legislative Council to grant a *Petition for Involuntary Revocation of Enrollment* on one or more of the grounds set forth in Paragraphs 9.1.1 through 9.1.3, above; or

- 11.9.1.2 to uphold the Legislative Council's decision upholding the Committee's supplemental finding that an application or reapplication for enrollment is fraudulent, frivolous, and/or filed in bad faith, as provided in Subparagraphs 7.2.1.2 and 8.5.2.2 and as incorporated in Paragraphs 7.4.3 and 8.6.2.

To the extent that the appeal bond is insufficient to reimburse the Nation for its costs and fees described herein, the Court shall issue a judgment in the amount of the deficiency against the appellant and in favor of the Nation.

- 11.9.2 In the event the Court finds that the Committee and/or the Legislative Council has acted in bad faith, the Court shall award Appellant his or her court costs, reasonable attorney fees and other costs of litigation.
- 11.9.3 In all appeals other than those in which the Court finds and rules as set forth in Paragraphs 11.9.1 and 11.9.2, above, each party shall be responsible for their own court costs, attorney fees and other costs of litigation.

Section 12. Temporary Provisions

12.1 Establishment of Citizenship for Initial Members of Citizenship Committee.

- 12.1.1 Nominees for appointment to the first two positions on the initial Committee formed subsequent to the enactment of this Code shall apply to the Legislative Council for and be

granted enrollment as citizens in the Nation before being confirmed to their positions. Such applications shall contain the information and one or more supporting documents described in Section 6, above. The decision to grant or deny such an application shall be by a majority vote of the Legislative Council and issued in a formal resolution of the Council.

12.1.2 Any nominee described in Subparagraph 12.1.1, above, whose application is denied by the Legislative Council shall have no right of appeal. However, after the initial Committee has been duly constituted, such person shall have the right to apply for enrollment in the same manner as any other person under the provisions of this Code, and the Committee shall treat such person's application as an original application, not a reapplication.

12.1.3 Until such time as the first two positions of the initial Committee formed subsequent to the enactment of this Code shall be appointed and confirmed, all functions of the Committee shall be performed by a Special Master appointed by an Executive Order issued by the Chief Executive of the Nation pursuant to Article 12, Section 2, Paragraph (f) of the Constitution of the Modoc Nation.

12.2 Obtaining and Filing Documents and Notices Prior to Establishment of Offices for the Modoc Nation. Until such time as the Modoc Nation has established offices sufficient to carry out the purposes of this Citizenship Code, all forms and documents described in this Code shall be obtained from and submitted to the Committee and Legislative Council at whatever address they shall each designate. Such address shall be advertised in the Nation's newsletter and posted on the Nation's Internet Website.

12.3 Status of Appeals Prior to the Funding and Staffing of the Modoc Nation's Judicial Branch. Until such time as the Modoc Nation funds and staffs a fully functioning Judicial Branch, including a Circuit Court and Supreme Court, appeals to these courts shall be placed in a "pending" status, and no further action shall be taken on such appeals.

Section 13. Severability.

13.1 If a court of competent jurisdiction finds any provision of this Citizenship Code to be invalid or illegal under the Constitution of the Modoc Nation and or federal law, such provision shall be severed from this Code and the remainder of this Code shall remain in full force and effect.

Section 14. Effective Date.

14.1 This Code shall be effective from the date of its enactment by the Legislative Council and signing by the Chief Executive of the Modoc Nation or enactment by other means as provided by Article 11, Section 8(c) or 8(d) of the Constitution of the Modoc Nation.

Bill Number MNLK — 2011-01B Concerning Matters of Citizenship in the Modoc Nation

Passed by the Legislative Council on the 29 day of January, 2011 by a vote of 5 for and 2 against.

Attested to and affirmed:



Speaker of the Legislative Council



Deputy Speaker of Legislative Council




Council of Elders Chairperson



Acting Secretary of the Legislative Council

Approved and signed into law by the Chief Executive of the Modoc Nation on the 29 day of JAN, 2011.



Chief Executive of the Modoc Nation