



**RESOLUTION OF THE GOVERNING BODY OF THE  
THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD INDIAN RESERVATION**

**A Resolution Entitled: “Establishment of Ethics Committee Budget, Clerk, and Submission of Pending Ethics Complaints”**

**WHEREAS,** The Mandan Hidatsa and Arikara Nation (“MHA Nation” or “Tribes”) having accepted the Indian Reorganization Act of June 18, 1934 (“IRA”), and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and

**WHEREAS,** The Constitution of the MHA Nation generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article III, Section 1 of the Constitution of the MHA Nation provides that the Tribal Business Council is the governing body of the Tribes; and

**WHEREAS,** Article VI, Section 5(1) of the Constitution of the MHA Nation provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council; and

**WHEREAS,** Article VI, Section 5(c) of the Constitution of the MHA Nation specifically authorizes and empowers the Tribal Business Council to administer funds within the exclusive control of the Tribes; and

**WHEREAS,** The Tribal Business Council passed the Ethics in Government Ordinance in September 2008; and

**WHEREAS,** The Business Council desires that the Ethics Committee begin the immediate review of pending ethics complaint(s); and

**WHEREAS,** A budget, hereby attached to this Resolution, has been created and proposed by the Ethics Committee and represents a keystone to efficient operation of the Ethics Committee; and

**WHEREAS,** A job description for the Ethics Committee Clerk, hereby attached to this Resolution, has been created and proposed by the Ethics Committee and is necessary for the efficient operation of the Ethics Committee; and

**WHEREAS,** the Legal Department shall be responsible for providing a clerk from within its office for the Ethics Committee and shall find sufficient office space for the Ethics Committee to carry out its duties and responsibilities; and



**WHEREAS,** Rules of Procedure, hereby attached to this Resolution, have been created and proposed by the Ethics Committee and are necessary to for the efficient operation of the Ethics Committee.

**NOW THEREFORE BE IT RESOLVED,** that the Tribal Business Council of the Three Affiliated Tribes hereby approves the proposed budget for the Ethics Committee and authorizes the Legal Department to provide a Clerk of the Ethics Committee from within its office, and shall be responsible for finding adequate space for the Ethics Committee to carry out its duties and responsibilities.

**BE IT FURTHER RESOLVED,** that the Tribal Business Council hereby approves and adopts the Rules of Procedure.

**BE IT FURTHER RESOLVED,** that the Tribal Business Council will forward on to the Ethics Committee any pending ethics complaint(s). The Tribal Business Council will forward said complaint(s) to the Ethics Clerk who shall follow the proper protocols to ensure that the complaint is properly heard before the Ethics Committee.

**BE IT FINALLY RESOLVED,** that the Tribal Business Committee hereby reserves the right to review and approve any and all agreements, contracts, rules and regulations that may arise as a result of the terms and intents of this Resolution and take such other actions as are necessary to carry out the terms and intent of this Resolution.

*(The remainder of this page is intentionally left blank)*

*(Certification page to follow)*





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## **MEMORANDUM**

### **CONFIDENTIAL COMMUNICATION**

**TO:** Chairman Mark Fox; MHA Nation Tribal Business Council  
**FROM:** Fredericks Peebles & Morgan LLP  
**DATE:** February 5, 2015  
**RE:** MHA Ethics Committee Documents

This memorandum will provide a brief description of four documents related to the establishment of the MHA Ethics Committee: 1.) MHA Nation Ethics in Government Rules of Procedure, 2.) MHA Nation Ethics Committee Clerk Job Description, 3.) MHA Nation Ethics Committee Proposed Budget, and 4.) a Resolution Establishing the Ethics Committee Budget, Clerk, and Submission of Pending Ethics Complaints.

#### **MHA Nation Ethics in Government Rules of Procedure**

The Rules of Procedure ("Rules") were created pursuant to Section III.B.4 of the Mandan Hidatsa & Arikara Nation Ethics in Government Ordinance ("Ordinance"), adopted September 16, 2008. The purpose of establishing the Rules of Procedure is to set forth proper procedure for the filing and review of Ethics Complaints under the Ordinance. The Rules should be construed and administered to secure the just, speedy, and inexpensive determination of every Complaint filed pursuant to Section III.D of the Ordinance.

If adopted, the Rules establish a few elements intended to efficiently investigate and address claims made under the Ordinance. The following is offered as a brief highlight of the processes agreed upon by the sitting Ethics Committee that will economize and streamline investigations.

First, Rule 5 sets forth a clear process for filing an Ethics Complaint. This process is essential since, in the past, there appeared to be no defined manner by which a tribal member could lodge his/her Complaint. Rule 5 creates a transparent and clear process.

Rule 9 identifies the manner and time frame in which the Ethics Committee shall investigate an Ethics Complaint. Historically, there has been no timeline defined in which the Ethics Committee was obligated to investigate a Complaint.

Rule 13 provides for a clearly established procedure for an administrative hearing. This procedure is essential for two reasons. First, it establishes a clear due process procedure for those subject to claims made under the Ordinance. Second, it creates transparency as to how an administrative hearing shall be conducted for all parties participating in the hearing.

Included in Rule 13 (as well as in Rule 9) are the powers of the Ethics Committee to subpoena and summon witnesses in the administration of justice under the Ordinance. This power is essential to the full development of facts and fair and complete determination of issues.

#### **MHA Nation Ethics Committee Clerk Job Description**

The job description is very straight-forward, but highlights the expectation of close cooperation with the Ethics Committee and its members to calendar, coordinate, and generally ensure that Ethics Complaints are being addressed in an efficient and effective manner.

#### **MHA Nation Ethics Committee Proposed Budget**

The proposed budget was reviewed and approved by the Ethics Committee. Line items for a Special Prosecutor (described in the Rules of Procedure), a Process Server, and the Ethics Committee Clerk highlight the emerging needs for an efficiently operating Ethics Committee. Further, because the Tribe sought to hire legally trained, non-tribal members for the Ethics Committee, travel costs were also factored in here.

#### **Resolution Establishing the Ethics Committee Budget, Clerk, and Submission of Pending Ethics Complaints**

The Resolution, if passed, addresses three important issues in establishing a functioning Ethics Committee. First, it adopts the proposed budget. By adopting the budget, the Tribe will earmark those funds needed to pay for the Committee and the support staff so they may begin fulfilling their duties under the Ordinance. The Resolution also authorizes the Legal Department to provide an Ethics Committee Clerk who shall begin accepting Ethics Complaints pursuant to the Rules of Procedure.

Second, the Resolution adopts the Rules of Procedure. Once established, the Rules will provide a clear process for tribal members to lodge Ethics Complaints, as well as a clear process for the Ethics Committee to investigate and hear Complaints. Passage of the Rules will mitigate much of the uncertainty currently surrounding how the Ordinance is implemented.

Lastly, the Resolution forwards all pending Ethics Complaints to the Ethics Committee. This element of the Resolution is important due to the fact that some Ethics Complaints have been pending for well over a year. By ordering the Ethics Committee Clerk to initiate the appropriate protocols to have these Complaints heard, the Tribe is evidencing its intent to enforce its Ethics in Government Ordinance.

#### **CONCLUSION**

The above is offered only as a brief synopsis of the highlights of a number of Ethics Committee documents. If you have any questions or would like to discuss further, please contact the Tribe's General Counsel, Tom Fredericks, at (303) 673-9600.

**MHA NATION  
ETHICS IN GOVERNMENT  
RULES OF PROCEDURE**

**RULE 1: SCOPE AND PURPOSE**

Pursuant to Section III.B.4 of the Mandan Hidatsa & Arikara Nation Ethics in Government Ordinance ("Ordinance"), adopted September 16, 2008, these Rules of Procedure ("Rules") shall serve to accompany and set forth proper procedure for the filing and review of Ethics Complaints under the Ordinance. The Rules should be construed and administered to secure the just, speedy, and inexpensive determination of every Complaint filed pursuant to Section III.D of the Ordinance.

**RULE 2: OATH TO UPHOLD TRIBES' CONSTITUTION AND LAWS**

The Ethics Committee shall take an oath to uphold the Tribes' Constitution and laws in the execution of its duties. Each member of the Ethics Committee shall acknowledge that he/she has received a copy of the Tribes' Ethics in Government Ordinance and will both implement and abide by the Ordinance.

**RULE 3: APPOINTMENT OF CHAIRPERSON**

The Ethics Committee shall, by a majority vote, elect a Chairperson for the Ethics Committee for the term of one (1) year. The Chairperson shall have the power to direct all proceedings under the Ordinance. This power shall include delegation of some or all of his/her responsibilities to other Committee members as he deems appropriate, including, but not limited to, delegation of primary leadership and responsibility for individual Complaints to other Committee members, investigation of Complaints, oversight of administrative hearings, drafting of memoranda at the conclusion of administrative hearings, drafting Notices of Final Decisions, or any other responsibilities held by the Chairperson.

**RULE 4: RIGHT TO BE REPRESENTED**

Parties to a Complaint have the right to employ counsel for the purpose of supporting or defending claims made under the Ordinance. Complainant(s) are not entitled to have compulsory representation paid for by the Tribes when filing their complaint, but may hire an attorney of their choosing at their own expense. If Complainant(s) can demonstrate that good cause exists, Complainant(s) may make a request to the Chairperson of the Ethics Committee to appoint a Special Prosecutor to prosecute the Complaint. A Special Prosecutor shall be appointed at the sole discretion of the Ethics Committee.

**RULE 5: FILING A COMPLAINT**

An Ethics Complaint shall be considered filed if it meets the requirements set forth in Section III.D of the Ordinance and if it is submitted in person or by postal mail to the clerk of the Ethics Committee. Upon receipt, the clerk shall stamp the first page of the Complaint as received and shall remit a stamped copy of the Complaint to the Complainant.

**RULE 6: SERVICE OF PROCESS**



The Clerk of the Ethics Committee shall designate an individual who is at least 18 years old and not a party to the Complaint to serve the Complaint upon the individual(s) named in the Complaint. Upon service, the person serving the Complaint shall submit proof of service to the Clerk of the Committee for filing with the Complaint.

**RULE 7: SUBMISSION OF COMPLAINT TO ETHICS COMMITTEE**

Once the Complaint is served upon all parties and proof of service is filed with the Clerk of the Committee, the Clerk shall transmit a copy of the Complaint and the proof of service to each of the members of the Ethics Committee.

**RULE 8: CONFLICT OF INTEREST OR RECUSAL OF COMMITTEE MEMBER**

In the event that an Ethics Committee member identifies an actual or potential conflict of interest in a filed Complaint, that Committee member may recuse himself or herself from proceeding in any further consideration of the Complaint. The remaining Committee members may appoint a replacement for that Committee member for all further proceedings regarding that Complaint. In the event that a Committee member chooses to recuse himself or herself for any reason, the remaining Committee members may appoint a replacement for that Committee member for all further proceedings regarding that Complaint.

**RULE 9: INVESTIGATION OF COMPLAINT**

Upon receipt of the Complaint, the Ethics Committee shall promptly conduct an investigation into the allegations found therein. The Ethics Committee investigation is intended to determine whether the allegations made in the Complaint are factually and legally sufficient to meet the standard set forth in Section III.D and Section III.E of the Ordinance. The Ethics Committee may utilize any resources it deems appropriate to investigate the claims found in the Complaint. The Ethics Committee shall have the power to subpoena and summons witnesses and/or documents for the purpose of its investigation and/or its Administrative Hearing.

**RULE 10: DISMISSAL**

After its investigation, if the Ethics Committee determines by a majority vote that the Complaint contains facts insufficient to constitute a violation of the Ordinance, non-compliance with the Ordinance, insufficient evidence to support the allegations found in the Complaint, or if the Committee lacks personal and subject matter jurisdiction over the claims and parties identified in the Complaint, the Committee shall draft an Order dismissing the Complaint and setting forth the facts and/or legal bases for dismissal. The Order shall be signed by the Committee members who determined dismissal was appropriate. A copy of the Order of Dismissal shall be sent to all parties to the Complaint.

**RULE 11: NOTICE OF ADMINISTRATIVE HEARING**

After its investigation, if the Ethics Committee determines by a majority vote that the Ethics Complaint meets the minimum requirements for consideration under the Ordinance, the Committee shall schedule an Administrative Hearing, pursuant to Section III.G, within 45 calendar days from the date the Ethics Committee votes to hear the Complaint. Notice of the Administrative Hearing, which shall include the date, time, location, and procedure that will be followed during the hearing, shall be served upon all parties to the Complaint.

**RULE 12: SPECIAL PROSECUTOR**

In the event the Complainant(s) can demonstrate that good cause exists to appoint a Special Prosecutor, including the inability of Complainant(s) to adequately represent themselves during the Administrative Hearing, or if the Complainant(s) are tribal entities that do not have an individual who can represent the group, or for any other good cause shown, the Chairperson of the Ethics Committee, in his sole discretion, shall appoint a Special Prosecutor to represent the interests of the Complainant(s).

**RULE 13: PROCEDURE FOR ADMINISTRATIVE HEARING**

- (a) No Administrative Hearing shall be valid as to any party unless he/she has been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be audio recorded and a full and complete record shall be kept of the proceedings.
- (b) Each party participating in the Administrative Hearing, including any persons offering testimony, shall swear under oath that the statements each offers in the Administrative Hearing are true to the best of his knowledge. The Chairperson of the Ethics Committee, or his/her designee, shall administer the oath at the commencement of the Administrative Hearing to all parties and witnesses. Pursuant to Section III.G.3, the Ethics Committee may impose or recommend sanctions or other penalties on parties or witnesses who knowingly offer false testimony.
- (c) The Ethics Committee may consider any information it gathers in its investigation of the Complaint and make available such information to the parties prior to the Administrative Hearing.
- (d) The conduct of Administrative Hearings shall be informal. The Hearing shall be directed by the Chairperson of the Ethics Committee, or his/her designee. The Ethics Committee may, at its discretion, allow the parties to offer an opening statement. All parties shall thereafter be afforded opportunity to present their case, with the Complainant(s) proceeding first.
- (e) The Administrative Hearing shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination shall be permitted. The Ethics Committee may intercede at any point in the hearing to further develop facts and other information presented by any of the parties or any of the witnesses.
- (f) The Ethics Committee may enter into Executive Session at any point during an Administrative Hearing, including, but not limited to, taking witness testimony, to protect and preserve sensitive information, or to protect and preserve the privacy of parties or witnesses.
- (g) The Ethics Committee shall have the power to sequester and subpoena witnesses.
- (h) The Ethics Committee may, at its discretion, allow the parties to offer a closing statement.

- (i) At the conclusion of the hearing, the Ethics Committee shall inform the parties that, pursuant to Section III.G.4, the Committee shall immediately deliberate in executive session and, by memorandum, shall render its findings of fact, conclusions of law, as well as orders regarding sanctions within five (5) business days after concluding its deliberation.
- (j) Pursuant to Section III.H, the Ethics Committee shall, by majority vote, determine whether a violation of the Ordinance occurred and issue its Notice of Final Decision to the individual subject to the Complaint within three (3) business days after rendering its Memorandum and Orders. The Notice of Final Decision shall include notice of the right to appeal to the Fort Berthold District Court if the Ethics Committee determines that a violation of the Ordinance occurred.

**RULE 14: ANNUAL COMMITTEE MEETING AND REPORT TO TRIBES**

At or near the end of the fiscal year, the Ethics Committee shall convene an annual committee business meeting for the purposes of drafting and submitting a budget for the upcoming fiscal year and to compile an annual report that it may present to the Tribal Business Council upon the Council's request.



## **ETHICS COMMITTEE CLERK JOB DESCRIPTION**

### **Job Description and Duties**

The Ethics Committee Clerk ("Clerk") will serve as the primary clerical support for the Ethics Committee. The Clerk will work closely with Ethics Committee members to ensure that submitted Ethics Complaints are filed, calendared, heard, and parties are notified of the Ethics Committee's decisions. The Clerk will work independently within the established policies and procedures of the Ethics Committee. The Clerk will perform moderately complex filing and legal clerical work and must perform all required duties within frequent deadlines, time limitations, and pressure from Committee users and staff. The completion of tasks will require speed, sustained attention, and a high degree of accuracy. The duties of the Clerk will include, but are not limited to:

1. To serve as clerk to the Ethics Committee in the preparation and submission of hearings calendars and/or complaints before the Ethics Committee.
2. Attend hearings to record minutes, administer oaths, and record and file exhibits introduced.
3. Examines legal documents presented to the Ethics Committee for completeness of information, accuracy, and legal format, for review by the Committee, and/or official filing.
4. Prepares minute orders, legal notices, Committee decisions, and other administrative documents.
5. Receives and maintains custody during hearings of all exhibits submitted in evidence.
6. Sends notice of Committee actions to a variety of parties.
7. Informs parties having business with the Ethics Committee.
8. Coordinates Committee's activities with a Master Calendar.
9. Arranges hearings and meetings before the Ethics Committee and maintains appropriate files and records for said hearings and meetings.
10. Certifies to correctness of minutes; enters proceeding in dockets.
11. Any other tasks assigned by the Ethics Committee or its Chairperson.

### **Minimum Qualifications**

A qualified applicant will have general knowledge of administrative and/or legal proceedings, legal and administrative terminology, the Ethics in Government Ordinance, and office methods including, but not limited to filing, drafting correspondence, and calendaring.

A qualified applicant will have the ability to understand, interpret, explain and follow laws, procedures and policies involved in processing administrative complaints; maintain accurate and complete records of administrative proceedings and related matters; organize, prioritize, and complete work assignments with minimal supervision and under time constraints; compose correspondence independently; establish and maintain effective working relationships with Committee Members, attorneys, coworkers, parties to proceedings, and the public; operate standard office machines and equipment such as a typewriter, work processing, computer terminal, printer, telephone equipment, etc.; read, write and speak English at a level necessary for satisfactory job performance.

A qualified applicant generally obtains the knowledge and skills through a high school diploma plus two years of experience performing equivalent duties or a college degree and one year of performing similar duties.

2015 Ethics Committee Budget			
Legal Expenses			
Attorney	Hourly Rate	Expected Hours	Cost
Ann Mahoney	150	100	\$15,000.00
Deborah Dubray	150	100	\$15,000.00
Ervin Lee	150	100	\$15,000.00
Section Subtotal			\$45,000.00
Line Item			
Line Items			
Travel Expenses		\$30,000.00	
Clerk of the Ethics Committee		\$45,000.00	
Process Server		\$15,000.00	
Special Prosecutor		\$25,000.00	
Miscellaneous (includes benefits costs)		\$35,000.00	
Section Subtotal			\$150,000.00
Total			
Legal Subtotal			\$45,000
Expense Subtotal			\$150,000
Total Budget			\$195,000



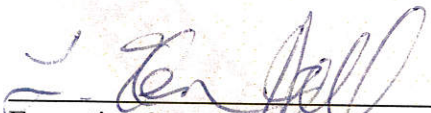
**CERTIFICATION**


I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 11<sup>th</sup> day of February, 2015, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] Voting. [  ] Not Voting.

Dated this 11<sup>th</sup> day of February, 2015.

**ATTEST:**

  
\_\_\_\_\_  
Executive Secretary: L. Ken Hall  
Tribal Business Council  
Three Affiliated Tribes

  
\_\_\_\_\_  
Chairman: Mark Fox  
Tribal Business Council  
Three Affiliated Tribes