

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

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and authority under said Act; and

WHEREAS, The Constitution and Bylaws of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities for the welfare and benefit of the Tribe and tribal members; and

WHEREAS, The Tribal Business Council is empowered to enact laws providing for social and economic benefits to tribal members; and

WHEREAS, The Tribal Code is being revised, and it is intended that members receive economic benefits from current energy development of resources on the Fort Berthold Indian Reservation; and

WHEREAS, Resolution 81-259 (adopted 12/81) was approved as an interim ordinance clarifying civil jurisdiction over non-Indians in light of current case law, and the Rules of Appellate Procedure; and

WHEREAS, Because of out-dated inconsistent chapters-sections still in the Tribal Code, questions have arisen as to which laws and appellate procedural rules apply.

THEREFORE, BE IT RESOLVED That the attached Resolution 81-259, as amended (1982), is hereby adopted.

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members, of whom 7 constitute a quorum, were present at a Special Meeting, thereof duly called, noticed, convened and held on the 22 day of October, 1982; that the foregoing resolution was duly adopted at such meeting by the affirmative vote of 8 members, 0 members opposed, 0 members abstained, 0 members not voting, and that the said Resolution has not been rescinded or amended in any way.

Chairman (voting) ~~(not voting)~~

Dated this 22 day of October, 1982.

*Ellie Mack*  
SECRETARY, TRIBAL BUSINESS COUNCIL

ATTEST:

*Austin H. Becker*  
CHAIRMAN, TRIBAL BUSINESS COUNCIL

Contents

Chapter 1... General provisions

- Section 1 - Authority and Construction
- 2 - Establishment of Courts
- 3 - Jurisdiction of the County

Chapter 15.. Court of Appeals

- Rules of Appellate Procedure
- Composition of Court; Appointment

Chapters - Sections Repealed

The above chapters 1 and 15 repeal and supercede the following, or any other inconsistent chapters or sections.

1. Chapter I - Fort Berthold Indian Court  
Pages 1-5 (1934)
2. Chapter I, as amended by Resolution No. 76-44 (1976).
  - A. Court and Procedure.  
Subchapter I Generally.  
(Repeal all Sections: 1-5)
  - B. Tribal Appeals Court  
Subchapter 2.  
(Repeal all Sections: 1-13)
  - C. Tribal Court      Subchapter 3  
Subchapter 3  
Repeal only Sections:
    1. Jurisdiction
    2. Powers
3. Chapter II - Judicial Procedure, Civil  
(Repeal only Section 1. Actions, Decisions, Enforcement, and
  - a. Jurisdiction  
Section 12 - Appeals a-k).

4. Chapter 15 - Rules for Court of Appeals

(Repeal all Sections: 1-12).

Reference

Tribal (District) Court compositions etc.  
See Subchapter 3 Resolution 76-44, as amended.

Judicial Procedure, Civil  
See Chapter II, as amended.

Judgment and Execution,  
See Chapter 9

Criminal Procedure  
See Chapter 6

## CHAPTER 1 - GENERAL PROVISIONS

### Section 1 Authority and Construction

#### 1.1 Policy

This civil and criminal codification of laws is adopted as the Fort Berthold Tribal Code by the Three Affiliated Tribes pursuant to the inherent authority vested by Treaties, and the Constitution of the Three Affiliated Tribes of the Fort Berthold Indian Reservation. The intent of the Fort Berthold Tribal Code is to protect all persons and resources, and to achieve self-sufficiency.

#### 1.2 Sovereign Immunity

Nothing in this Code shall be construed as a waiver of the sovereign immunity of the Three Affiliated Tribes, or consent to suit, unless waived by resolution specifically referring to such in express terms.

#### 1.3 Inconsistencies Repealed

Any and all resolutions or ordinances which conflict in any way with the intent and provisions of this Code are hereby repealed.

#### 1.4 No Waiver

The adoption of any law or document by reference into this Code shall in no way constitute a waiver or cession of any sovereign power of the Three Affiliated Tribes.

#### 1.5 Principles of Construction

The following principles of construction will apply to all of the laws of this Code unless a different construction is obviously intended:

- (1) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.
- (2) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
- (3) Whenever a term is defined in a specific part of this Code, that definition shall apply to all parts of this Code unless a contrary meaning is clearly intended.
- (4) This Code shall be construed as a whole to give effect to all its parts in a logical, consistent manner.

(5) Whenever the meaning of a term in this Code is not clear on its face or in the context of the Code, such term shall have the meaning given to it by the laws of other tribal codes, then the State of North Dakota, unless such meaning would undermine the underlying principles and purposes of this Code.

(6) If any of the provisions of this Code or the application of any provision to any person or circumstances is held invalid by a competent court, the remainder of this Code shall not be affected thereby, and to this end the provisions of this Code are declared to be severable.

(7) Any typographical errors or omissions shall be ignored whenever the intended meaning of the provision containing the error or omission is otherwise reasonably certain to the Court.

(8) Any other issues of construction shall be handled in accordance with generally accepted principles of construction giving due regard for the underlying principles and purposes of this Code.

## Section 2 Establishment of Courts

### 2.1 Powers

(1) The judicial power of the people of the Three Affiliated Tribes shall be vested in the Fort Berthold Judiciary and shall extend to all cases and controversies in law, equity, and custom arising under the laws of the Three Affiliated Tribes.

(2) The Courts, acting through their officers, shall have the power to issue all process, orders, judgments, and writs which may be necessary for the due execution of the powers vested in the Courts.

### 2.2 District Court

The District Court is created and shall be a court of general jurisdiction over all civil and criminal matters and appeals from administrative bodies as provided by law.

### 2.3 Juvenile Court

The Juvenile Court is created and shall have original and exclusive jurisdiction over all cases arising under the juvenile code sections.

### 2.4 Court of Appeals

The Court of Appeals is created and shall exercise original and exclusive jurisdiction to hear all appeals from final judgments or orders of the District or Juvenile Court, or as provided by law.

## 2.5 Applicable Law

(1) The laws and treaties of the United States shall be the applicable law in the Courts where they apply to the Three Affiliated Tribes or Fort Berthold Indian Reservation as a matter of federal law, or where incorporated by reference in this Code.

(2) In all other cases, the ordinances and resolutions of the Three Affiliated Tribes as well as the provisions of this Code shall be the law applied by the Courts.

(3) Whenever the issue in controversy shall not be resolved by federal law or by the laws of the Three Affiliated Tribes, the judge may seek authority in the custom, usage, and jurisprudence of the Tribes.

(4) State and federal laws not applicable to the Three Affiliated Tribes or the Fort Berthold Indian Reservation shall not be deemed applicable law in any proceeding, except as provided herein, unless agreed to be applicable by stipulation of the parties with consent of the Court, nor shall they be construed to have any greater authority than the laws or customs, or usage of the Three Affiliated Tribes.

## Section 3 Jurisdiction of the Courts

### 3.1 Policy

It is the intent of this Code that the jurisdictional powers be liberally construed to serve the ends of justice, and a failure to legislate in a particular area shall not be deemed a waiver of that authority.

### 3.2 Jurisdictional - Territorial

The jurisdiction of the Courts shall extend to any and all lands and territory within the Reservation boundaries, including all easements, fee patented lands, rights-of-way; and over lands outside the Reservation boundaries held in trust for Tribal members or the Tribe.

### 3.3 Jurisdiction - Personal

Subject to any limitations or restrictions imposed by the Constitution or laws of the United States, the Court shall have civil and criminal jurisdiction over all persons who reside, enter, or transact business within the territorial boundaries of the Reservation; provided that criminal jurisdiction over non-Indians shall extend as permitted by case law.

(1) For purposes of jurisdiction "persons" shall include individuals, business, partnerships, associations, cooperatives, and corporations, or any other legal commercial entity.

3.4 Jurisdiction - Property

(1) The Courts shall have jurisdiction over all property, real, and personal, which is located within the exterior boundaries of the Fort Berthold Indian Reservation. Such jurisdiction shall extend to the determination of ownership rights in property, interests in property, and the application of property to the satisfaction of a judgment for which the owner of the property is deemed to be liable.

(2) The jurisdiction of the Courts shall be limited only by federal law; provided however, that the Courts shall have jurisdiction to render money judgments against "persons" who are not subject personally to the jurisdiction of the Courts only if the action is commenced by an attachment of the defendant's property which is located within the exterior boundaries of the Reservation. Unless the defendant subjects himself to the jurisdiction of the Courts, any judgment in an action commenced by the attachment of property belonging to a party not personally subject to the jurisdiction of the Courts may be executed only against the property actually attached.

3.5 Jurisdiction - Subject Matter

The Courts shall have jurisdiction over all civil causes of action arising within the exterior boundaries of the Reservation, and over all criminal offenses which are enumerated in this Code, and which are committed within the exterior boundaries of the Reservation.

3.6 Sovereign Immunity

(1) Nothing contained this the proceeding provisions on jurisdiction or any other provision of this Code shall be construed as a waiver of the sovereign immunity of the Three Affiliated Tribes, its officers, or businesses, unless specifically and expressly waived.

CHAPTER 15 - COURT OF APPEALS

Section 1...Rules of Appellate Procedure

Rule 1 Scope of Rules

These rules shall govern the procedures in appeals from civil and criminal judgments and/or final orders of the District Court and the Juvenile Court.

Rule 2 When An Appeal May Be Taken

(a) Appeals of Right. Any party to an action in the District Court shall have the right to appeal any criminal conviction or any judgment or order in a civil case before the court, except as provided in part (b) of this rule.

(b) Discretionary Appeals. It shall be within the discretion of the Court of Appeals to entertain appeals in the following cases:

- (1) Conviction of any traffic offense;
- (2) Order of eviction
- (3) Orders of judgments of the Juvenile Court.

Rule 3 Appeal of Right-How Taken

(a) Filing of Notice of Appeal, Civil and Criminal. An appeal of judgment or order of the District Court shall be taken by filing a notice of appeal with the Clerk of Court within thirty (30) days of the date of the entry of judgment or order appealed from.

(b) Notice of Appeal. From the notice of appeal, whether it involves a criminal or civil action, shall specify the name of the Court from which the appeal is taken, the name of the party or parties taking the appeal, the judgment or order from which the appeal is taken and the Court to which the appeal is taken.

(c) Services of the Notice of Appeal. The Clerk of Court shall serve notice of the filing of notice of appeal, whether a civil or criminal action is involved, by mailing a copy of the notice of appeal to each party and each party's legal representative. The Clerk shall note on each copy when the notice of appeal was filed.

Rule 4 Appeal of Temporary Restraining Order and Preliminary Injunction

(a) Temporary Restraining Order and Preliminary Injunction-How Taken. An appeal from the granting of a temporary restraining order or preliminary injunction may be sought by filing a petition for permission to appeal with the Clerk of Court within five (5) days after the entry of such order by the District Court.



(b) Form or Contents of Petition: The petition shall contain a statement of the facts necessary to understand the issues and questions of law involved, a statement of the reasons the order should be lifted, and a statement of injuries, damages, or harm being incurred by the petitioner.

Rule 5 Discretionary Appeal - How Taken

(a) Application to file a Discretionary Appeal. In those cases where the Court of Appeals may within its discretion entertain an appeal, the appellant shall file a notice of appeal in a manner set out in Rule 3. Within twenty (20) days of filing a notice of appeal, appellant shall submit to the Court an application to file a discretionary appeal and brief in support of his application. Appellee may express his opposition to the application by filing a brief within fifteen (15) days after receipt of appellant's brief in support of the application.

Rule 6 Release Pending Appeal of a Criminal Conviction

Application for the release of a convicted defendant pending appeal of the judgment of conviction shall first be made in the District Court. If the District Court refuses to release pending appeal, or imposes conditions of release, the District Court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, appellant may motion for release, or modification of conditions of release, to the Court of Appeals, or a judge thereof. Such a motion shall be determined promptly after appellant and appellee present their oral and/or written arguments on the motion.

Rule 7 Record

(a) Composition of Record on Appeal. The original papers and exhibits filed in the District Court, the transcript of the proceedings, if any, and a certified copy of the final judgment or order appealed from shall constitute the record of appeal in all cases, civil and criminal.

(b) Statement of Proceedings When No Report or Transcript Made. If no report of the evidence or proceedings at a trial or hearing was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence and proceedings. Said statement shall be filed with the Clerk of Court. The appellant shall serve a copy of the statement on appellee, and the appellee shall have ten (10) days to raise objections and propose amendments to the statement and file those objections and proposed amendments with the Clerk of District Court. The District Court shall settle the objections, make any necessary amendments, and finally approve the statement for inclusion in the record of appeal.

Rule 8 Transmission of the Record

(a) The record on appeal, including the transcript or statements of proceedings, shall be completed and turned over to the Court of Appeals within thirty (30) days after the notice of appeal is filed by appellant or application for discretionary appeal is granted unless the District Court extends the time for

good cause shown. Appellant shall take whatever action is necessary to enable the Clerk of District Court to assemble the record, including paying for the cost of preparing transcripts.

(b) When the record on appeal is complete, the Clerk of District Court shall transmit a complete copy of the record of each judge of the Court of Appeals who has been designated to hear the appeal. The time and date of the transmission shall be noted on each copy of the record.

Rule 9 Filing and Service of Document of Appeal

(a) Filing. Parties to an appeal shall file an original and four (4) copies of any and all papers required or permitted with the Clerk for the Court of Appeals.

(b) Service of Papers. Copies of all papers filed with the Clerk of the Court of Appeals by parties to an appeal shall be sent by certified mail to opposing parties and their legal representatives by the party filing such papers. All papers filed with the Clerk shall be accompanied by a written statement of the party filing such papers or his legal representatives certifying that such papers have been mailed to the opposing party(s) or his legal representative(s).

Rule 10 Briefs, memoranda, and Statements

Within twenty (20) days after the record of an appealed action is transmitted to the Court of Appeals, the appellant shall file a written brief, memorandum, or statement in support of his appeal with the Clerk of Court. The appellee shall have fifteen (15) days after receipt of appellant's brief, memorandum or statement. Filing and service in either case shall be accomplished in the manner provided in Rule 9. No further response shall be allowed to either party without leave of Court.

Rule 11 Amicus Curiae

In any appellate proceeding, amicus briefs, memoranda, or statements shall be permitted only in the following situations:

- (1) When all parties to the action consent to the filing of an amicus brief, memorandum, or statement;
  - (2) By leave of Court pursuant to a properly filed motion;
- or
- (3) At the request of the Court.

Rule 12 Oral Argument

(a) Provision for. the Court of Appeals shall decide all appeals upon the briefs, memoranda, and statements filed together with the record of the trial court, without oral arguments unless either party requests oral argument and shows the Court that such is necessary and/or will aid the Court in its decision. Nothing in these rules, however, shall preclude the Court from ordering oral arguments on its own motion.

(b) Procedure. When oral arguments are ordered, the Clerk of Court shall notify both parties of the specific time, date place the arguments are to be heard. At the hearing both appellant and appellee shall have a maximum of twenty (20) minutes to present their respective arguments. Appellant shall be permitted to both open and close the arguments.

Rule 13 Decision

All decisions of the Court of Appeals shall be arrived at by a simple majority of the three-judge panel. All decisions shall be issued in written form, and all judgments on appeal shall be final.

Rule 14 Frivolous Appeals

If the Court of Appeals finds that a party has filed a frivolous appeal, the Court may award the appellee his just damages, plus single or double costs.

Rule 15 Costs

If an appeal is dismissed by the Court of Appeals, appellant shall pay all costs of the appeal. If the judgment of the trial court is affirmed, the Court, in its discretion, may order the appellant to pay all costs of the appeal or direct the parties to pay a designated portion of the costs. If the judgment of the trial court is reversed, the Court, in its discretion may order the appellee to pay all costs of the appeal, or direct the parties to pay a designated portion of the cost.

Rule 16 Issuance of Mandate

A mandate of the Court of Appeals shall issue ten (10) days after entry of judgment in the appeal.

Rule 17 Terms of Court

The general term of the Court of Appeals shall be held semi-annually on the first Tuesday of July and January. Special terms may be held at such times and places as may be designated upon twenty-days notice prior thereto.

Rule 18 Rule Making Power of Court

The Court of Appeals may make all rules of pleading, practice, and procedure which the Court may deem necessary for:

1. The administration of justice in the Courts of this Reservation.

2. The method of taking, hearing, and deciding appeals to the Court.

Rule 19 Court's Rule Making Power Overrides Council; Rules to be in Writing -- Filing with Clerks and Attorneys

a. All statutes relating to the pleadings, practice, and procedure in criminal or civil actions, remedies, or proceedings, passed by the Tribal Council, shall have the force and effect of rules and shall remain in effect unless and until amended or otherwise altered by rules promulgated by the Appeals Court; except that no rule promulgated by the Court shall enlarge, abridge, or modify in any manner the substantive rights of any litigant.

b. All rules promulgated by the Court shall be accompanied by a written order signed by the Chief Justice of the Court and shall be filed with the Clerk of the District Court and the Tribal Council; and copies shall be issued to all attorneys licensed to practice before the Courts of the Three Affiliated Tribes.

Section 2 Composition of Court; Appointment

a. The Tribal Appeals Court shall consist of a chief justice and two associate justices.

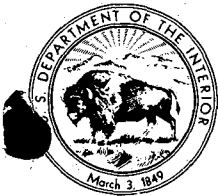
b. The chief justice shall be appointed by the Tribal Business Council from a list of names of qualified persons submitted by the Tribal Court Administrator. The chief justice shall be graduated from an accredited law school and shall have been admitted to the practice of law in a state of the United States or before the courts of the United States.

c. The two associate justices shall be appointed by the Tribal Court Administrator from a list of qualified or experienced tribal court judges from, but not limited to other tribal court systems. Said list shall be approved by the Judicial Committee or Tribal Council. Tribal judges from other reservations automatically qualify for the list of judges.

Section 2.1 Salary of Justices

The justices of the Court of Appeals shall be paid such salary as the Tribal Council may approve with the concurrence of the Judicial Council.

82-192



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
ABERDEEN AREA OFFICE  
115 FOURTH AVENUE S.E.  
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO:  
TGS/Jud. Services

DEC - 6 1982

Through: Acting Superintendent, Ft. Berthold Agency

Mr. Austin Gillette, Chairman  
Three Affiliated Tribes  
Business Council  
New Town, North Dakota 58763

Dear Mr. Gillette:

Three Affiliated Tribal Resolution No. 82-192 amends portions of the Three Affiliated Tribe's Law and Order Code dealing with civil jurisdiction over non-Indians and Appellate Procedures.

Under the delegated authority of 10 BIAM 3.1, we have reviewed Resolution No. 82-192 and find no reason to rescind it. The Resolution is effective as of the date of the Superintendent's approval, October 26, 1982.

The Tribe is to be commended for a very good approach to an Appellate System.

Sincerely,

Assistant Area Director  
Human Resources

cc: Supt., Ft. Berthold Agency  
Chief Judge, Three Affiliated Tribes Tribal Court