

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 the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes 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 VI, Section 5(1) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to adopt resolutions regulating the procedures of Tribal agencies and Tribal officials; and
- WHEREAS,** Section 3 of Subchapter 3 of Chapter 1 of the Code of Laws of the Three Affiliated Tribes prescribes relatively limited and extremely ambiguous grounds for the removal of the judges of the Fort Berthold Tribal Court, fails to authorize any alternative measures of discipline less severe than removal, and fails to clearly apply to the magistrates of the Tribal Court; and
- WHEREAS,** Said Code of Laws is devoid of any comprehensive rules governing the judicial and extra-judicial activities of the judges and magistrates of the Tribal Court, violations of which rules would constitute more comprehensive and specific grounds for disciplinary measures imposed upon such judicial officers; and
- WHEREAS,** It is the considered judgment of the Tribal Business Council that all judges and magistrates of the Tribal Court should be subject to (1) the same comprehensive rules of judicial conduct, (2) removal and alternative disciplinary measures based upon the same grounds, and (3) disciplinary measures imposed by a newly-established administrative body; and
- WHEREAS,** With the intent of accomplishing such objectives, it will be necessary to amend Section 3 of Subchapter 3, which Section provides for the removal of the judges of the Tribal Court by the Tribal Business Council, and Section 10 of said Subchapter, which Section provides for the removal of the magistrates of the Tribal Court by the Chief Judge;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council hereby formally approves and adopts the amendment to Section 3 of Subchapter 3 of Chapter 1 of the Code of Laws of the Three Affiliated Tribes, the language of which amendment is attached hereto and incorporated herein and which Section is retitled "Rules of Judicial Conduct."

BE IT FURTHER RESOLVED, That the Tribal Business Council hereby formally approves and adopts the amendment to Section 10 of Subchapter 3 of Chapter 1 of the Code of Laws of the Three Affiliated Tribes, the language of which amendment shall read as follows:

"Section 10. Magistrates

Each judicial district shall have one magistrate who shall be appointed by the Chief Judge from a list of individuals residing in said district who meet the qualifications of office and whom have been recommended by the Judicial Council.

- a. **Qualifications.** No person shall be appointed magistrate for a judicial district unless he shall be at least thirty years of age, a high school graduate able to read and write the English language, and an enrolled member of the Three Affiliated Tribes.
- b. **Salary.** Each magistrate shall receive a full remuneration for all official duties the sum of \_\_\_\_\_ dollars per month.
- c. **Powers and Duties.** Magistrates shall approve all complaints before allowing the same to be sworn to before him and shall be responsible for preparing all criminal complaints and issuing all warrants or summons. Magistrates may also fix bail for persons brought before them on a warrant for arrest. Magistrates shall have such

### **Section 3. Rules of Judicial Conduct**

The provisions set forth in this Section prescribe the rules of judicial conduct which shall govern the judicial and extra-judicial activities of each Fort Berthold Tribal Court Judge and Magistrate.

#### **A. Applicability of Rules**

The rules of judicial conduct prescribed in this Section shall apply to and be binding upon the Chief Judge, the Associate Judge, and each Magistrate appointed to judicial office in the Fort Berthold Tribal Court system, and shall apply to and be binding upon any other judicial office which may be established by the Tribal Business Council. In addition, any person appointed to serve temporarily in the capacity of Tribal Court Judge or Magistrate shall be bound by the provisions set forth in this Section. Each such person bound by the provisions set forth in this Section shall hereinafter be referred to as a "judicial officer" and shall fully comply with each of the rules of judicial conduct prescribed hereinafter. Any failure to so comply with such rules of conduct shall serve as a ground for appropriate discipline or retirement from judicial office.

#### **B. Rules of Judicial Conduct**

##### **Rule 1. A Judicial Officer Shall Uphold the Integrity and Independence of the Tribal Judiciary**

An independent and honorable Tribal judiciary is essential to justice in the Reservation community. A judicial officer shall participate in maintaining, enforcing, and observing the rules of judicial conduct, so that the integrity

and independence of the Tribal judiciary may be preserved.

a) A judicial officer shall encourage a separation of powers between the judicial branch and other branches of Tribal Government and shall make every reasonable effort to avoid any contact or action which might contravene such separation of powers.

b) A judicial officer shall not generally participate in Tribal legislative or executive decision making, except in those instances wherein such participation is in accordance with the tradition or laws of the Three Affiliated Tribes. In the event that a judicial officer should be authorized to participate in the decision making of a Tribal legislative or executive body, he or she shall take special care to avoid actual conflict of interest or the appearance of conflict of interest.

c) A judicial officer, except a person appointed temporarily as such in the capacity of Associate Judge, shall not practice law, either as a lawyer or an advocate, in the Fort Berthold Tribal Court. A person appointed temporarily to serve in the capacity of Associate Judge shall not act as

a lawyer in any proceeding in which he or she has served in such capacity or in any other proceeding related thereto.

**Rule 2. A Judicial Officer Shall Avoid Impropriety and the Appearance of Impropriety in All Activities**

- a) A judicial officer shall respect and comply with the law and shall act in such a manner that promotes public confidence in the integrity and impartiality of the Tribal judiciary. Conduct which fails to promote such public confidence includes, but is not limited to, corrupt conduct, fraudulent conduct, and other forms of criminal conduct, habitual intoxication by alcohol or controlled substances, and gross incompetence, whether mental or physical.
- b) A judicial officer shall not allow family, social, business, or other relationships to influence his or her conduct or judgment. A judicial officer shall not lend or use the prestige of his or her office to advance the private interests of others; nor shall a judicial officer convey or permit others to convey the impression that they are in a special position to influence any judicial officer. A judicial officer shall not testify voluntarily as a character witness.

c) A judicial officer shall not personally receive or handle any money or negotiable instrument which constitutes payment to the Fort Berthold Tribal Court of a fine, a judgment, restitution, court costs, child support, or any other monetary payment.

**Rule 3. A Judicial Officer Shall Perform the Duties of Judicial Office Impartially and Diligently**

The judicial duties of a judicial officer shall take precedence over all other activities. The judicial duties shall include all the duties of judicial office prescribed by the laws, customs, and traditions of the Three Affiliated Tribes. In the performance of such duties, the following standards of conduct shall apply:

**a) Adjudicative Responsibilities**

1) A judicial officer shall be faithful to Tribal laws, customs, and traditions and shall maintain competence in such laws, customs, and traditions. A judicial officer shall be unswayed by partisan interests, public clamor, political pressure, and fear of criticism and shall resist attempted influence on the judicial office by other officials of the Three Affiliated Tribes and of other governments and by any other persons

attempting to improperly influence the office.

- 2) A judicial officer shall maintain order in all proceedings presided over by him or her. A judicial officer shall not assume the role of an advocate for any party to a proceeding and shall not interfere in the conduct of any proceeding, except in those instances wherein such interference is necessary to protect the rights of a party. A judicial officer shall ensure that all proceedings are conducted in conformity with applicable Tribal law.
- 3) A judicial officer shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he or she deals in the capacity of judicial officer, and shall require similar conduct of lawyers, judicial officials and staff, and others subject to his or her control.
- 4) A judicial officer shall afford every person, who is legally interested in a proceeding, or that person's lawyer, a full right to be heard and shall, except as authorized by law, neither solicit

nor consider ex parte or other communications concerning the substance of any pending or impending proceeding. Provided, however, that a judicial officer may obtain the advice of a disinterested expert on the law, custom, or tradition applicable to a proceeding before the judicial officer, if he or she gives notice to the parties of the expert consulted and the substance of the advice, and affords the parties a reasonable opportunity to respond to the advice provided by the expert.

- 5) A judicial officer shall promptly dispose of the business of the Tribal Court.
- 6) A judicial officer shall abstain from public comment about a pending or impending proceeding and shall require similar conduct on the part of Tribal Court personnel subject to his or her immediate direction and control. Provided, however, a judicial officer may make public statements in the course of his or her official duties and may explain the procedures of the Tribal



Court for purposes of public information.

**b) Administrative Responsibilities**

- 1) A judicial officer shall diligently perform his or her administrative responsibilities.
- 2) A judicial officer shall require Tribal Court staff and officials subject to his or her immediate direction and control to diligently perform their respective administrative responsibilities.
- 3) A judicial officer should take or initiate appropriate disciplinary measures against another judicial officer or lawyer for unprofessional conduct of which he or she may become aware.

**c) Disqualification**

- 1) The disqualification of a judicial officer is appropriate in those instances wherein the impartiality of the judicial officer might reasonably be questioned, including, but not limited to, those instances wherein:
  - (a) the judicial officer has a personal bias or prejudice concerning a party to a proceeding or has personal knowledge of disputed

evidentiary facts concerning the proceeding;

(b) the judicial officer (serving in the capacity of temporarily-appointed Associate Judge) served as a lawyer in the matter before the Court, or a lawyer with whom such judicial officer previously practiced law served, during such association, as a lawyer in such matter;

(c) the judicial officer, or any member of his or her family residing in his or her household, has a financial interest in the subject matter of a proceeding or in any party to the proceeding, or any other interest which could be substantially affected by the outcome of the proceeding; or

(d) the judicial officer or his or her spouse, or a person in a reasonably close family relationship to either of them, or the spouse of such person:

- (1) is a party to the proceeding, or an officer, director, or trustee of a party;
- (2) is acting as a lawyer or advocate in the proceeding;
- (3) is known by the judicial officer to have an interest which could be substantially affected by the outcome of the proceeding; or
- (4) is, to the knowledge of the judicial officer, likely to be a material witness in the proceeding.

**D) Remittal of Disqualification**

A judicial officer otherwise disqualified by Rule 3 c) 1) (c) or Rule 3 c) 1) (d) may, in lieu of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based upon such disclosure, the parties and lawyers, independent of any participation by the judicial officer, all agree in writing that the judicial officer's relationship is immaterial or that the judicial officer's financial interest is insubstantial, the judicial officer is no longer disqualified, and may preside over the proceeding. The agreement, signed by each

party and lawyer, shall become part of the record of the proceeding.

**Rule 4. A Judicial Officer May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice**

A judicial officer, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judicial officer retains the capacity to decide impartially any issue that may come before the judicial officer:

- a) A judicial officer may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- b) A judicial officer may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and a judicial officer may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.
- c) A judicial officer may serve as a member, officer, or director of an organization or governmental agency devoted to the

improvement of the law, the legal system, or the administration of justice. A judicial officer may assist such an organization in raising funds and may participate in their management and investment, but shall not personally participate in public fund raising activities. A judicial officer may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

**Rule 5. A Judicial Officer Shall Regulate Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties**

**a) Avocational Activities**

A judicial officer may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judicial office or interfere with the performance of his or her judicial duties.

**b) Civic and Charitable Activities**

A judicial officer may participate in civic and charitable activities which do not reflect adversely upon judicial impartiality or interfere with the performance of judicial duties. A judicial officer may serve as an

officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members; provided, however, that he or she shall not so serve if it is likely that the organization will be involved in judicial proceedings that would ordinarily come before him or her or will be regularly involved in adversary proceedings in any court.

**c) Financial Activities**

- 1) A judicial officer shall refrain from financial and business dealings which tend to reflect adversely on the impartiality of the judicial officer, interfere with the proper performance of his or her judicial duties, exploit his or her judicial position, or involve him or her in frequent transactions with lawyers or persons likely to come before the Court.
- 2) Subject to the requirements prescribed in the provision set forth immediately hereinabove, a judicial officer may hold and manage investments, including real estate, and engage in other remunerative

activities, including the operation of a business.

- 3) Except as permitted by Tribal laws, customs, and traditions, neither a judicial officer nor a member of his or her family residing in his or her household shall accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his or her impartiality in judicial proceedings.

**Rule 6. A Judicial Officer Shall Refrain from Political Activity Inappropriate to Judicial Office**

- a) A judicial officer shall not engage in any Tribal political activity, except on behalf of measures to improve the law, the legal system, or the administration of justice.
- b) A judicial officer shall resign from his or her office when the judicial officer becomes a candidate in a Tribal Business Council election of the Three Affiliated Tribes.

**C. Violation of Rules**

Any and all allegations of violations of the rules of judicial conduct brought against judicial officers shall be heard before a Tribal judicial conduct commission, which administrative body shall be created and appointed by the Tribal Business Council of the Three Affiliated Tribes and

*the procedural rules of which body shall be established by  
said Council.*



**Section 3.     Removal-from-Office**

Any judge of the Tribal Court may be removed from office by the Tribal Business Council when the Judicial Council recommends removal based upon a finding, after full advisory hearing, by the Judicial Council that the judge sought to be removed is guilty of malfeasance or misfeasance in office, neglect of duty, mental or physical incompetence to perform the duties of office, or that the judge has been convicted of a felony in a state or federal court since entering upon the duties of office.

Section 10. Magistrates

Each judicial district shall have one magistrate who shall be appointed by the Chief Judge from a list of individuals residing in said district who meet the qualifications of office and whom have been recommended by the Judicial Council. Each magistrate so appointed shall serve at the pleasure of the Chief Judge of the Tribal Court.

- a. **Qualifications.** No person shall be appointed magistrate for a judicial district unless he shall be at least thirty years of age,, a high school graduate able to read and write the English language, and an enrolled member of the Three Affiliated Tribes.
- b. **Salary.** Each magistrate shall receive a full remuneration for all official duties the sum of \_\_\_\_\_ dollars per month.
- c. **Powers and Duties.** Magistrates shall approve all complaints before allowing the same to be sworn to before him and shall be responsible for preparing all criminal complaints and issuing all warrants or summons. Magistrates may also fix bail for persons brought before them on a warrant for arrest. Magistrates shall have such other duties as may from time to time be prescribed by law. Magistrates shall have no powers other than those clearly prescribed by law.

d. **Removal from Office.** The Chief Judge of the Tribal Court may temporarily remove any magistrate from office for cause, and, may remove any magistrate permanently for cause, with the approval of the Judicial Council.

e.d. **Training.** Each magistrate appointed to hold office shall be required to attend a training session conducted by the judges of the Tribal Court at least annually.

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- d. **Training.** Each magistrate appointed to hold office shall be required to attend a training session conducted by the judges of the Tribal Court at least annually."

**BE IT FURTHER RESOLVED,** That the above-cited amendments shall become effective immediately.

**C E R T I F I C A T I O N**

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, 8 were present at a SPECIAL Meeting thereof duly called, noticed, convened, and held on the 28<sup>th</sup> day of OCTOBER, 1986; 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 said Resolution has not been rescinded or amended in any way.

Dated the 28<sup>th</sup> day of OCTOBER, 1986.

Donni Hauke  
Secretary, Tribal Business Council

**ATTEST:**

Alyce Spotted Bear  
Chairman, Tribal Business Council