

TRIBAL CODE
CHAPTER 16:
REMOVAL FROM OFFICE

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HISTORY NOTE:

Current Ordinance:

Resolution 2004-78, adopted August 3, 2004, adopts Tribal Code Chapter 16: Removal From Office, effective immediately, and rescinds all earlier Removal from Office Codes.

Prior Ordinances:

Enacted on June 3, 2003, by Resolution 2003-83 adopting Tribal Code Chapter 16: Removal from Office, effective immediately.

Amendments:

Resolution 2007-62, adopted April 17, 2007 amends Chapter 16: Effect of Resignation §16.104 (7).

Resolution 2003-89, adopted June 17, 2003 amends Chapter 16: Removal from Office by repealing §16.105 (4).

TRIBAL CODE

CHAPTER 16

REMOVAL FROM OFFICE

16.101 Purpose and Scope.

The purpose of this Chapter is to implement Tribal Constitution article VI by providing procedures for determining petitions for removal from office of Tribal-elected officials. This Ordinance governs proceedings for removal initiated after the effective date of this Chapter.

16.102 Findings.

The Board of Directors finds that:

(1) The Tribal Constitution and Bylaws provides for a democratically elected Chairperson and Board of Directors, with fixed terms of office. It permits removal from office upon petition by eligible voters alleging specific facts which show a violation of tribal law, after provision of notice and a hearing on the charges before a specially-convened hearing board.

(2) The provisions of Tribal Constitution article VI provide the sole remedy to tribal members for removal of elected officials from office. Removal of officials elected by tribal members is disfavored and is warranted only in serious circumstances.

(3) The requirement of allegations of specific facts showing a violation of tribal law, contained in Tribal Constitution article VI, section 3, is intended to provide the accused with fair notice of the charges against him or her, to allow for a determination whether the allegations would warrant removal if proven, to safeguard elected officials against spurious accusations, and to inform the accused official of the facts which will be at issue at the hearing.

(4) That article VI, section 4, of the Constitution does not define the term "Hearing Board."

(5) That because removal of an elected official not only impacts the official, but the entire Tribe, it is incumbent upon the Board of Directors to establish a removal process that encompasses important notions of due process and justice and provides adequate safeguards to those accused of wrongdoing.

16.103 Definitions.

As used in this Chapter:

(1) “Accused official” means the member of the Board of Directors or the Chairperson who is the subject of a removal petition filed in accordance with Tribal Constitution article VI, section 3.

(2) “Eligible voter” means any enrolled member of the Tribe who is eighteen years of age or older, and who is registered to vote in accordance with the Tribal Election Ordinance.

(3) “Hearing Board” means the body created under §16.107(3) of this Chapter for the purpose of a hearing of the charges in the petition against the accused official.

(4) “Hearing Officer” means the person identified under §16.107(4) of this Chapter as the person to preside over the hearing on the charges in the petition against the accused official.

(5) “Secretary” means the Tribal Recording Secretary and staff working under the Tribal Secretary’s direction.

(6) “Conviction” means an entry of judgment of conviction by a court with jurisdiction over the person so convicted.

16.104 Initiation of Proceedings.

(1) Proceedings under this Chapter are commenced with the filing with the Board of Directors of a petition seeking the removal of the chairperson or board member. A petition may not request the removal of more than one official. Filing of a petition shall take place at a regular or special meeting of the Board of Directors. The filing of a petition constitutes receipt of a petition within the meaning of Tribal Constitution article VI, section 4(a).

(2) A removal petition shall have a principal sponsor, who shall act as the petitioner for purposes of any hearing held on the petition. The principal sponsor shall be a qualified and registered voter of the Tribe. The name of the principal sponsor shall appear on each page of the petition along with their mailing address and telephone number. The principal sponsor is responsible to oversee the initiation of the circulated petition and for compliance with the provisions of this Chapter. Along with the petition the principal sponsor shall submit a statement signed under penalty of perjury that to the best of his or her knowledge and belief each page of the petition was circulated by a qualified circulator and complies with the provisions of sub. (3).

(3) Signatures on the petition shall be solicited only by qualified circulators, who shall be eligible voters of the Tribe. Each page circulated shall contain a certification by the qualified circulator of that page that he or she is a qualified circulator and that to the best of his or her knowledge and belief no signature on the petition was obtained through fraud, deceit, or misrepresentation; he or she has neither caused nor permitted a person to sign the petition more

than once; he or she has no knowledge of a person signing the petition more than once; each signature is the genuine signature of the person purporting to sign the petition; the signer was an eligible voter of the Tribe residing at the address shown; and that the signature was solicited and obtained in compliance with this Chapter.

(4) The principal sponsor and the accused official shall be required to file with the Secretary of the Board of Directors a full disclosure of all funding and services received from any source other than the principal sponsor's or accused official's own funds. The disclosure shall disclose the name and address of each person or entity contributing funds or services (and the value of those services). A disclosure shall be filed with the petition and weekly thereafter until the entire matter is resolved.. The disclosure shall be signed under penalty of perjury. The penalty for perjury under this section shall include, but not be limited to, a fine of no less than \$1,000.00 and no more than \$5,000.00.

(a) Any contributions received by the principal sponsor shall be limited to \$250.00 per tribal member in accordance with the Tribal Election Ordinance, section 10.112(2)(e).

(b) Financing or contributions in support of a removal petition shall be limited to Tribal member contributions. The principal sponsor shall not take contributions or financing from any non-tribal source.

(c) Intentional violation of this section of the Ordinance by the principal sponsor shall result in dismissal of the petition.

(d) Intentional violation of this section of the Ordinance by the accused official may be considered a ground for removal.

(5) At all times throughout the process identified in this Chapter, the petition and signatures attached thereto shall be a public record.

(6) All matters concerning the petition shall be heard publicly and conducted in open session.

(7) Once a petition for removal is filed pursuant to this section, the subsequent resignation of the accused official shall have no effect upon these proceedings.

16.105 Contents of Petition.

(1) The petition shall contain a statement of specific facts which, if true would constitute a violation of tribal law specified in sub. (3), together with a citation to the provision of the Constitution and Bylaws, ordinance, or resolution violated. The allegations must provide facts which, if true, would establish each element of the violation alleged and which provide sufficient detail so that the accused official can reasonably determine the conduct with which he or she is charged.

- (2) A petition may not include more than one ground for removal
- (3) Violations of the following shall constitute the only grounds which a petition for removal may be based upon:
 - (a) Violation of the Constitution and Bylaws.
 - (b) Violation of the Tribal Code Ch. 10: Election Ordinance, or Tribal Code Ch. 96: Open Meetings Ordinance.
 - (c) Violation of any other ordinance or resolution that specifically provides that its violation may constitute grounds for removal from office.
 - (d) A criminal conviction in state, Federal, or Tribal Court.
- (4) If the accused official is a member of the Board of Directors, the petition must be signed by a number of eligible voters equal to or greater than one hundred (100) or 10% of the votes cast in that unit in the last election, whichever is greater. Only original signatures shall be submitted in the petition.
- (5) If the accused official is the Chairperson, the petition must be signed by a number of eligible voters equal to or greater than one hundred (100) or 10% of the votes cast for Chairperson in the last election, whichever is greater. Only original signatures shall be submitted in the petition.

16.106 Procedure Upon Filing of Petition.

- (1) The Secretary shall maintain the original petition at all times. The allegations contained in the petition shall be made public. Information identifying the signatories to the petition shall be made public.
 - (a) The Secretary shall deliver within two business days by United States mail to the accused official and each member of the Board of Directors a copy of the petition.
- (2) As soon as practicable after the filing of the petition, the Secretary shall refer the petition to the Tribal Registrar, who shall make a determination of whether the petition contains the requisite number of signatures of eligible voters. The Registrar shall review the petition and Tribal voter registration records under standards and procedures utilized for the verification of signatures on nominating petitions for Tribal elections conducted under Tribal Code Ch. 10. The Registrar shall certify the determination to the Board of Directors at least five (5) days before the date of the meeting at which the Board of Directors will consider the petition.

(a) Immediately upon certification by the Tribal Registrar of the signatures, the names and addresses of all those signing the Petition shall be released to the accused official.

(3) The Board of Directors shall consider the petition within fifteen (15) days of its receipt of the petition at a regular meeting or a special meeting called for that purpose. The Board of Directors shall consider the petition in an open meeting.

(4) The Board of Directors shall determine whether the petition, on its face, appears to meet the criteria of §16.105. The Board of Directors may, in its discretion, request the opinion of the Legal Department or outside counsel on the facial sufficiency of the petition. If the Board of Directors determines that the petition appears to be insufficient, it shall dismiss the petition.

(5) If the Board of Directors determines after the presentation of evidence by the principal sponsor that the petition is supported by probable cause, the Board of Directors shall set the date, time, and place for the initial hearing and direct the Secretary to prepare and serve a notice of hearing upon the accused official stating the date, time and place of the initial hearing and attach the allegations of the petition as notice of the charges against the accused official.

(6) The determination of the Board of Directors on the sufficiency of the petition shall not be subject to the referendum provisions of Tribal Code Ch. 12.

16.107 Hearing Board.

(1) Upon a determination by the Board of Directors that the petition appears to be valid in accordance with section 16.106(4), the Chief Judge of the Tribal Court shall contact the person appointed by the Board of Directors to select a Hearing Board and the Hearing Officer in accordance with sub. (2) in order to initiate the selection and appointment process. The Chief Judge shall act as the Tribal liaison with the person appointed to do the selections and, once the Hearing Board and Hearing Officer are selected, to act as liaison with them as well.

(a) If more than one petition is filed against the same accused official, the Board of Directors may consolidate the petitions into one or more hearings.

(2) The Board of Directors shall appoint a person to select the Hearing Officer and the Hearing Board.

(3) The Hearing Board shall consist of three (3) attorneys who are licensed to practice law in at least one state, and who are not employees of the Tribe and have never had an attorney-client relationship with the Tribe, the petitioner, or a member of the Board of Directors, or who have never provided advice to the Board of Directors in any capacity. Preference in selection shall be given to attorneys who are Native American and to attorneys who are knowledgeable about tribes and Native American law.

(4) The Hearing Officer shall be an attorney licensed to practice law in at least one state and who meets the criteria set forth for Hearing Board members in sub. (3). Preference in

selection shall be given to an attorney who has judicial or similar experience, is Native American, and is knowledgeable about tribes and Native American law.

(5) The person making the appointments shall take reasonable steps to ascertain that the persons appointed meet all of the criteria set forth in this section. Upon completion of the appointment process, the appointing person shall prepare and submit to the Board of Directors a report concerning the appointment process within two (2) business days.

16.108 Review of Petition Signatures.

The accused official shall have the right to challenge the signatures on the petition. Any challenge to the sufficiency, authenticity or validity of the signatures on the petition shall be made by motion. If the accused official makes a motion challenging the signatures, the Hearing Officer shall hear such motion prior to the Hearing, in a public hearing. The accused official and the principal sponsor shall have the right to call witnesses at the motion hearing. If the Hearing Officer determines that a petition contains less than the required number of signatures or does not meet the requirements of §16.104, the Hearing Officer shall dismiss the petition.

16.109 Initial Hearing.

The Hearing Board shall convene at the date, time, and place set in the notice of hearing and hold the initial hearing as provided in this section. The Hearing Officer shall preside at the initial hearing. If circumstances warrant, the Hearing Board may participate by teleconference, but the Hearing Officer shall preside in person. The initial hearing shall be for the purpose of:

(1) if the accused official wishes to challenge the petition on its face, hearing arguments and ruling on the petition in accordance with §16.110;

(2) if the accused official wishes to challenge the make-up of the Hearing Board, hearing arguments and ruling on the make-up of the Hearing Board in accordance with §16.107;

(3) scheduling of the hearings on the petition;

(4) scheduling discovery, motions, and other preliminary matters;

(5) expediting the disposition of the action and discouraging wasteful prehearing activities;

(6) any other matter that the parties, the Hearing Officer, or the Hearing Board wish to discuss concerning the hearing.

(7) The Hearing Officer may enter an order summarizing the results of the initial hearing.

16.110 Standards for Determination of Petition.

(1) In deciding a challenge to the petition on its face filed under §16.109(1), the Hearing Board shall determine whether the petition meets the criteria of §16.105, and whether the violation alleged in the petition would, if true, warrant removal of the accused official from office.

(2) In making the determination as to whether the violation alleged in the petition would, if true, warrant removal from office, the Hearing Board shall consider the nature of the conduct and the public interest of the Tribe, including, but not limited to, such factors as:

- (a) the provision of law violated, or in the case of a criminal conviction, the crime for which the accused official was convicted;
- (b) whether the conduct is a breach of public trust, abuse of authority, or official misconduct;
- (c) whether the conduct evidences lack of integrity;
- (d) whether the conduct contravenes or frustrates an important Tribal policy or interest; and
- (e) whether the Tribe's interests or public trust and confidence in the Tribe or its officials would be impaired if the accused remained in office.
- (f) the credibility of parties and witnesses;
- (g) whether there is bias or prejudice on the part of any party or witness.

16.111 Hearing on the Petition.

(1) The Hearing Officer shall preside over the hearing. The Hearing Officer shall afford the accused official all of the rights guaranteed under the Indian Civil Rights Act and the United States Constitution. The Hearing Officer shall conduct the hearing and shall rule on preliminary and procedural matters before and at the hearing. The Hearing Officer shall conduct the hearing in accordance with the rules of procedure applicable to civil proceedings in federal courts and shall apply the rules of evidence applicable to civil proceedings in federal courts. The Hearing Officer shall not participate in the deliberations of or vote on the decision of the Hearing Board; provided, that if a member of the Hearing Board shall become unable to serve in that capacity or participate in the deliberations and decision, the Hearing Officer shall do so in place of that member.

(2) In the event that issues concerning preliminary or procedural matters arise requiring resolution before the selection of the Hearing Officer, any member of the Hearing Board that has already been selected may hear and rule on the matter.

(3) If an issue arises at any stage during the hearing that involves the interpretation of a any provision of the Tribal Constitution, the Hearing Board shall have the authority to interpret the provision. Such interpretation shall have no precedential value..

(4) The Hearing Board shall conduct a hearing on the petition, which shall be open to the public. The hearing shall be held at the place and shall commence on the date and time specified at the initial hearing. If requested by the Hearing Board, the Hearing Officer may hear all or part of the testimony or review all or part of the evidence and make findings of fact for the Hearing Board. An audio recording of the hearing shall be made in the same manner as for hearings in Tribal Court, and the hearing shall be videotaped in the same manner as for meetings of the Board of Directors.

(5) The Hearing Officer shall have the same power to swear witnesses and take testimony under oath and to issue process to compel the attendance of witnesses and the production of documents or other evidence, and to impose the same sanctions for failure to comply, as at a criminal proceeding under Chapters 70 and 71 of the Tribal Code. This power shall extend to tribal officials, and to documents and other evidence in the possession of the Tribe, notwithstanding claims of sovereign immunity.

(6) The parties to the proceeding shall be the principal sponsor, who shall be designated as the petitioner, and the accused official, who shall be designated as the respondent. Each of the parties shall have the right to be represented by counsel of their own choosing at his or her own expense.

(7) The petitioner shall have the burden of going forward with the evidence and the burden of proving the allegations of the petition by clear and convincing evidence.

(8) Each of the parties shall have the right to appear at the hearing, to present evidence and argument, and to call and examine witnesses. The accused official shall have the right to address the Hearing Board regarding the petition.

(9) The Hearing Board shall decide whether the petitioner met the burden of proof and whether the violation is sufficient to warrant that the accused official should be removed from office, applying the standards set forth in §16.110(2). The decision must be supported by a majority. The Hearing Board shall prepare a written decision setting forth its findings and the reasons for its decision, which may be prepared with the assistance of the Hearing Officer. The decision shall be recorded by the Hearing Officer and certified to the Board of Directors. The decision shall be rendered within 60 days after the initial hearing. The decision of the Hearing Board shall be final.

16.112 Improper Contact with Hearing Officer or Hearing Board.

(1) The Hearing Officer and the members of the Hearing Board shall not have any ex parte contact with the principal sponsor, the accused official, counsel for either party, or any other person concerning the proceedings; provided, that nothing shall prohibit contact by the Hearing Officer with counsel for either party (or a party, if not represented by counsel) concerning routine matters of administration of the proceedings. If any ex parte contact is made or attempted to be made, the Hearing Officer or member of the Hearing Board shall report the contact or attempt to the Hearing Board and to the Board of Directors.

(2) No person shall contact the Hearing Officer or any member of the Hearing Board with the intent of influencing the course or outcome of the proceedings under these Procedures.

(3) Except as provided in sub. (1), the principal sponsor and accused official shall make no contact, directly or indirectly, or cause contact to be made, with the Hearing Officer or any member of the Hearing Board with the intent of influencing the course or outcome of the proceedings under these procedures.

(4) No person shall contact the person appointed by the Board of Directors to select the Hearing Officer and Hearing Board, directly or indirectly, with the intent of influencing the selection process or the choices to be made by the appointed person; provided, that the appointed person may seek recommendations for appointees from persons who are not connected with the Tribal government or administration.

(5) As used in this section, “contact” includes any form of oral or written communication, including without limitation oral contact, written communication, phone calls, e-mails, voicemail, or voice messages.

(6) Any person who violates the provisions of this section may be sentenced to imprisonment not to exceed three (3) months, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both. In addition, violation of this section by a member of the Board of Directors shall constitute a violation of Tribal law upon which a petition for removal from office may be based.

16.113 Frivolousness

The Hearing Board shall have the authority to sanction the principal sponsor, the accused official or any attorney or other person appearing before it for presenting to the Hearing Board any paper or taking any action for an improper purpose, presenting claims or defenses which do not have evidentiary support or a basis in existing law or a good faith argument for the extension of existing law. The Hearing Board may apply Rule 11 of the Federal Rules of Civil Procedure by analogy.

16.114 Application and Effective Date.

This Chapter shall take effect on the date of its enactment and shall govern any petition filed with the Board of Directors after the effective date. It shall not apply to any proceedings on a petition filed prior to the effective date.

16.115 Repealer.

Resolution No. 2003-57, Establishing Interim Hearing Board Procedures, is repealed as of the effective date of this Chapter, except that it shall continue to apply to any proceedings on a petition filed prior to the effective date.