

POTAWATOMI LAW AND ORDER CODE

**TITLE 3
GRIEVANCE COMMITTEE**

**CHAPTER 3-1
SCOPE AND PURPOSE**

Section 3-1-1. Purpose.

It is the purpose of this Title to establish simple, fair, straightforward, and efficient procedures governing the removal process of Tribal officers and to mediate grievances from the membership, thus protecting the Tribe and its Constitution from arbitrary or reprehensible acts. These provision and rules shall be known as the Grievance Committee Procedure Act.

Section 3-1-2. Definitions.

The following definitions shall apply unless another meaning is clearly indicated by the context.

- (A) **Bribery.** “Bribery” shall mean the act of offering, giving, receiving or soliciting something of value for the purpose of influencing an action in the discharge of one’s public or legal duty.
- (B) **Complaint.** “Complaint” shall mean an allegation of misconduct in office.
- (C) **Embezzlement.** “Embezzlement shall mean to willfully take, or convert to his own use, another’s money or property, by reasons of his office, employment or position of trust.
- (D) **Grievance.** “Grievance” shall mean a perceived injury, injustice or wrong whether or not it would constitute misconduct in office.
- (E) **Improper Influence.** “Improper influence” shall mean the persuasion which is short of actual force that overpowers another’s free will to make intelligent and voluntary decisions, or denies or impedes another in the exercise or enjoyment of any right, power, or immunity.
- (F) **Investigative Hearing.** “Investigative hearing” shall mean a Grievance Committee hearing to determine if there is indicative evidence of misconduct in office.
- (G) **Malfeasance.** “Malfeasance” shall mean the commission of some act which is unlawful which the party had no right or authority to do which affects, interrupts or interferes with the performance of ones duties.

(H) Malice. “Malice” shall mean the intentional act without just cause to inflict ill will.

(I) Moral Turpitude. “Moral turpitude” shall mean an act of such vileness, or depravity in the private and social duties which is contrary to the accepted customs of the Tribe regarding justice, honesty, modesty, or good moral character.

(J) Nonfeasance. “Nonfeasance” shall mean the omission or failure of an individual to enter upon the performance of some distinct duty or undertaking which he has agreed, explicitly or implied, to perform.

(K) Public Monies. “Public monies” means all monies, bonds and evidence of indebtedness or their equivalent being in the possession of the Tribe for the Tribe, any other government, or any group or individuals.

(L) Misconduct in Office. “Misconduct in office” shall mean committing an act that may be defined as:

- (1) A felony or other crime involving dishonesty or moral turpitude.
- (2) Bribery.
- (3) Improper influence.
- (4) Retaliation for past official action.
- (5) Nonfeasance or malfeasance in office.
- (6) Unofficial action if he knowingly withholds from his successor in office, or any other person who may be entitled, to the official seal, any records, papers, documents or other writings pertaining or belonging to that office or mutilates or destroys or takes away the same.
- (7) Embezzling or misusing public monies.
- (8) Perjury.
- (9) Tampering with public records.
- (10) Excessive absence from meetings without reasonable cause for such absences.

CHAPTER 3-2 GENERAL PROVISIONS

Section 3-2-1. Swearing in Committee Members.

Members of the Grievance Committee shall be sworn into office with all appropriate dignity and ceremony. Persons appointed to fill any vacant position on the committee shall be sworn into office prior to performing any duties of office. The Grievance Committee shall consist of three (3) members from the Bar.

Section 3-2-2. General Powers of the Committee.

(A) It shall be the duty of each member of the Grievance Committee to personally become familiar with all the provisions of this Title and of the Constitution, to see that they are faithfully executed.

(B) The Grievance Committee, or its individual members, shall have the following general powers when used to further the investigation of a complaint or grievance initiated by a tribal member:

- (1) To administer oaths, to compel the attendance of witnesses or the production of papers, documents, or other evidence, and to conduct hearings.
- (2) To undertake investigative duties or mediation functions.
- (3) To dismiss the complaint at any stage in the proceeding if such complaint is without validation.

Section 3-2-3. Records to be Kept Permanently.

(A) One certified copy of the entire record shall be kept in the District Court.

(B) Each and every investigative hearing conducted by the Grievance Committee shall be recorded verbatim then duplicated and transcribed. The verbatim record shall become part of the permanent record.

(C) The record of each removal action shall be a permanent public record, and any person shall be entitled to examine that record upon request during normal business hours, provided, that no part of the permanent record shall be taken from its ordinary place of safekeeping for such examination.

Section 3-2-4. Assigning Case Numbers.

The committee shall assign each complaint a file number which shall be separate and distinct from the file numbers assigned to all other cases. A consecutive numbering system shall be used, and such numbers shall appear on each record, document, or thing regarding the case.

Section 3-2-5. Complaints.

(A) Any complaint submitted for naming more than one respondent member of the Tribal Council may be rejected by the Grievance Committee.

(B) All formal complaints shall be brought by the Complainant on behalf of the Prairie Band of Potawatomi Indians of Kansas.

(C) Any complaints filed may be joined to save time and expense and to prevent duplication of effort provided that no prejudice is shown to the respondents.

(D) Whenever complaints are joined, separate votes shall be taken as to each charge for each respondent, and separate orders shall be entered showing the votes taken.

Section 3-2-6. Stay of Further Removal Proceedings.

At any time during which two Tribal Council vacancies exist, due to the death, resignation, or removal, all further removal proceeding shall be immediately stayed by the Grievance Committee in their current status pending appointment of new Tribal Council members pursuant to the Constitution and By-laws.

Section 3-2-7. Severability.

It is the intent of the Prairie Band of Potawatomi Tribe that if any part of this Title is found to be unconstitutional or in violation of the Indian Civil Rights Act of 1978, whether on its face or as applied, that such remaining provisions of this Title as may be enforced shall remain in full force and effect and to such end this Title is declared to be severable.

Section 3-2-8. Disposition of Costs.

Any fees or costs required to be collected by any person, by any provision of this Title, shall be forthwith delivered to the Court Clerk and shall be deposited in the general fund, and shall be entered into the record.

**CHAPTER 3-3
MEDIATION**

Section 3-3-1. Authorization.

The Grievance Committee, or its individual members, is hereby authorized and directed to act as spokesman, or assist any tribal member who is aggrieved by any action or inaction of the Tribal Council or its members upon request of the tribal member whether or not the action or inaction would constitute misconduct in office as defined in this Title.

Section 3-3-2. Requests for Assistance.

Any request for assistance under this Section may be made verbally to a member of the Grievance Committee.

Section 3-3-3. Records.

No formality shall be required for assistance under this Section, and no records need be kept, provided, that no formal complaint is initiated.

Section 3-3-4. Duties of Parties.

It shall be the duty of the Tribal Council and its members, and the Grievance Committee and its members to attempt in good faith to resolve the problem presented by the tribal member or to explain the reasons the problem cannot be resolved.

**CHAPTER 3-4
INVESTIGATIVE HEARING**

Section 3-4-1. Investigative Commencement.

An investigative action is commenced by filing a complaint and the filing fee with the Grievance Committee.

Section 3-4-2. Complaint.

The complaint shall be a statement of the facts in writing, stating the grounds for misconduct in office, and signed by the complaining party with his individual name, address and telephone number.

The purpose of requiring a statement of the facts relied upon is to notify a person of reasonable understanding of the exact act of commission or omission being complained, and to avoid an unfair surprise and advantage. Accordingly, if the complaint does not state facts but simply accuses the person of misconduct or states simply conclusions of wrong-doing, the complaint shall be dismissed. No act of omission or commission which is not alleged in the complaint may be presented to or relied upon by the Grievance Committee or the General Council in determining the action.

The signature constitutes a certificate that the complaint had been read, that the information and belief with the grounds to support are true and to his best knowledge, and that it is not interposed for malice.

Section 3-4-3. Filing the Complaint.

(A) The complaint shall be filed by delivering an original and six (6) copies to any member of the Grievance Committee.

(B) Prior to accepting a complaint for filing, the grievance Committee shall require a filing fee to be paid in the amount of One Hundred Dollars (\$100.00) which shall be taxed as costs of the action. This filing fee shall be paid by certified check or money order made payable to: “The Prairie Band of Potawatomi Indian District Court”.

(C) Upon presentation of the complaint and the filing fee, a Grievance Committee member shall immediately write upon each copy the exact time and date of filing and sign his name. The filing fee shall be delivered immediately to the Court Clerk and deposited in the Court’s general fund.

(D) The Grievance Committee member receiving the complaint shall return one copy of the complaint to the complainant, deliver one copy to the Tribe for the official Tribal files, deliver one copy to each Grievance Committee member, and place the original and one copy in the Grievance Committee files. One copy shall be served to the Respondent.

Section 3-4-4. Service of Process.

Service of process shall consist of delivering a copy of the complaint which advises the respondent that he is required to answer the complaint or a default judgment will be entered against him and the complaint referred to the General Council for action. The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the Grievance Committee.

(A) Service may be made on a party by delivering the required papers to the party himself or upon some person of suitable age and discretion over fourteen (14) years old at the party’s home.

(B) Service may be made by certified mail deliverable to addressee only; return receipt requested showing the place, date, and person receiving same. Certified mail service shall be complete upon return of the postal receipt with the respondent’s name subscribed thereon.

(C) If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of such.

Section 3-4-5. Computation of Time.

(A) **Computation.** In computing any time period, the day of commencement shall not be counted but the last day of the time period shall be counted, provided, that any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday.

(B) **Enlargement.** The committee for good cause shown may enlarge the prescribed period of time.

(C) **Service by Mail.** Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time.

Section 3-4-6. Answer.

A respondent against whom a complaint has been made shall have twenty (20) days from the date of service upon him to answer or respond to the complaint.

A party shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts. A general denial shall not be made unless the respondent could in good faith deny each and every claim covered thereby.

Section 3-4-7. Role of Grievance Committee in Hearings.

The role of the Grievance Committee in all investigate hearings shall be that of finders of indicative evidence. As such they should hear the evidence submitted by the parties, and decide from the evidence submitted to them. It is improper for a Grievance Committee member to participate or assist a party in presenting his case before the committee. However, it is proper for a committee member to question any witness after both parties have finished their questioning in order to clarify any questions that committee member may have. Members of the Grievance Committee may not discuss the case outside of a hearing.

Section 3-4-8. Quorum.

The Grievance Committee may conduct a hearing of a complaint only if the majority of the committee are actually in physical attendance at the hearing, provided, that a single member of the committee may continue the hearing from time to time if a quorum is not present.

Section 3-4-9. Date of Hearing.

(A) The Grievance Committee shall set a time, date, and place for a hearing of a complaint. The hearing may be set at any time after the answer is filed and soon enough that the complaint can be heard with all reasonable speed.

(B) The committee may continue the hearing of the complaint from time to time for good cause shown or on its own motion.

(C) All parties shall be notified in writing of the time, date, and place of the hearing by the Grievance Committee.

Section 3-4-10. General Order of Hearing.

(A) At the time, date, and place specified in the notice of hearing, and upon the readiness of the Grievance Committee, the hearing shall be called to order by the Grievance Committee.

(B) The complainant may present an opening statement indicating his evidence so that the committee will know what to expect and what that party thinks is important to his case. The complainant shall then call its witnesses and offer its evidence in support of the complaint.

(C) The respondent may make his opening statement. The respondent then may call its witnesses and offer his evidence in support of his defense.

(D) The Committee shall consider their decision, and upon making a decision they shall announce it to the parties and the public subject to the provisions of Section 3-4-18.

Section 3-4-11. Taking Testimony of a Witness.

(A) At all hearings the testimony of witnesses shall be taken orally under oath.

(B) The party calling the witness may question the witness about any matter relevant to the issues presented in the complaint.

(C) The adverse party may then question the witness about any testimony given and, further, may question him about any other matter relevant to the issue presented in the complaint or relevant to the witnesses' honesty, reliability, or ability to perceive, remember, or relate the facts.

(D) A party may use leading questions whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

(E) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

(F) **Clarification.** Any member of the committee may then question the witness on any issue previously raised in order to clarify his understanding of the testimony of that witness.

Section 3-4-12. Evidence.

All evidence admissible under the Prairie Band of Potawatomi Code of Laws shall be admissible and the competency of witness to testify shall be similarly determined.

Section 3-4-13. Burden.

Establishing indicative evidence of misconduct in office shall be on the complainant. Every respondent shall be considered blameless until the evidence introduced at the hearing establishes otherwise.

Section 3-4-14. Standard of Proof.

The Grievance Committee must be convinced that sufficient indicative evidence is introduced at the hearing which establishes misconduct, as defined by this Title, occurring and the respondent is responsible for the misconduct.

Section 3-4-15. Findings and Order.

(A) If the members of the Grievance Committee do not agree that misconduct in office has been indicated, then a showing of misconduct in office has not been made and the committee shall order the complaint dismissed.

(B) If the Grievance Committee members do agree that misconduct in office has been indicated, then a showing of misconduct in office has been made and the Committee shall order the respondent bound over to a trial in District Court on the complaint or bound over for removal by the General Council, or both.

(C) Upon reaching a decision, the Grievance Committee shall state in writing the facts that they have found to be indicative, and the conclusions they have reached from those facts.

(D) Each committee member present shall sign the findings and order indicating his agreement or disagreement with the findings and order, or may separately state his findings and what he would order in writing.

Section 3-4-16. Result of False Swearing.

If any member of the committee has reason to believe that for complaining party swore falsely in making the complaint, or that any party or witness has otherwise perjured themselves under oath, or that any violation of the law has occurred, they shall initiate the appropriate action to be taken.

Section 3-4-17. Private Cause of Action Created.

Any Tribal Council member who is the subject of a complaint shall have a cause of action in the District Court for all his actual damages including damage to his reputation against the person making the complaint upon showing that the complaint was filed, that the Tribal Council member prevailed and the complaint was dismissed without General Council action and that the complaining party had no probable cause for bringing the complaint. Upon an additional showing that the complaint was frivolous or was filed for purposes of political advantage, harassment, intimidation, or any other unlawful purpose, the Court may award punitive damages.

Section 3-4-18. Calling the General Council Meeting.

Upon entering its findings and binding the respondent over the removal before the General Council, the Grievance Committee shall enter an order which shall be signed by all participating members calling a meeting of the General Council on a specified time and date at the Prairie Band of Potawatomi Reservation at Mayetta, Kansas, not less than ten (10) days after the date of the order.

Section 3-4-19. Notice to General Council.

Notice to the General Council, and all procedures for a general council meeting, shall be in accordance with the Constitution for calling special meetings.

**CHAPTER 3-5
GENERAL COUNCIL REMOVAL HEARING**

Section 3-5-1. Procedures.

The General Council shall meet and conduct a removal hearing in accordance with the Constitution and By-Laws.

Section 3-5-2. Presentation.

(A) The Grievance Committee shall present the complaint, the evidence and the findings of the investigative committee to the General Council. They shall not vote as to whether the respondent is to be removed from office.

(B) The General Council shall serve as a jury as a whole and as such shall determine from the evidence presented whether the respondent is to be removed from office.

Section 3-5-3. Deliberation.

After the presentation of the investigative hearing findings, any General Council member except the parties and the members of the Grievance Committee may address the General Council on any matter relevant to the issues, provided, that the Grievance Committee may impose reasonable and equal time limitations and maintain order and decorum.

Section 3-5-4. Voting.

The vote taken on the issue of removal of the respondent shall be by secret ballot. The Grievance Committee shall see that each General Council member who has signed in is given one ballot. The ballots shall be marked by the General Council members and collected by the Grievance Committee.

Section 3-5-5. Judgment.

The Grievance Committee shall immediately proceed to publicly count the returned ballots. More than one-half of the General Council quorum must respond in the affirmative for the removal of a Tribal Council member. The Grievance Committee shall announce the ballot results, enter such findings into the record and notify the Bureau of Indian Affairs and any other interested party of such results.

Section 3-5-6. Adjournment.

Upon counting the ballots and announcing the decisions of the General Council, the Grievance Committee shall adjourn the General Council meeting. No other or different action may be taken at a General Council meeting called by the Grievance Committee for the removal of a Tribal Council member.

Section 3-5-7. Powers of Court Not Diminished.

Nothing herein shall diminish or otherwise abridge the power or authority of the District Court to take jurisdiction of or enter any order in any matter relating to this subject matter which it would otherwise be competent to address.

(Title 3 enacted by PBP TC No. _____, _____)

