

TITLE 1. GENERAL PROVISIONS

ARTICLE I TRIBAL ENACTMENTS

CHAPTER 1. ORDINANCES AND RESOLUTIONS1-1-1
 Sec. 1-1101. Maintenance of Enactments.....1-1-1

CHAPTER 2. TRIBAL CODE1-1-1
 Sec. 1-1201. Designation.1-1-1
 Sec. 1-1202. Citation.1-1-2
 Sec. 1-1203. Uniform Numbering.1-1-3
 Sec. 1-1204. Publication and Availability.1-1-3

ARTICLE II LAW AND STATUTES

CHAPTER 1. GENERAL PROVISIONS1-2-1
 Sec. 1-2101. Principles of Common Law.1-2-1
 Sec. 1-2102. General Rules of Statutory Construction.1-2-1
 Sec. 1-2103. Headings and Notes.1-2-1
 Sec. 1-2104. Words and Phrases.....1-2-2
 Sec. 1-2105. Tense, Number, and Gender.1-2-2

CHAPTER 2. MISCELLANEOUS PROVISIONS.....1-2-2
 Sec. 1-2201. Effective Date of Enactments.1-2-2
 Sec. 1-2202. Superseding of Prior Enactments.....1-2-2
 Sec. 1-2203. Retroactive Effect of Enactments.1-2-2
 Sec. 1-2204. Computation of Time.....1-2-3
 Sec. 1-2205. Definitions.1-2-3

ARTICLE III TRIBAL COUNCIL PROCEDURE

CHAPTER 1. GENERAL PROVISIONS1-3-1
 Sec. 1-3101. Purpose and Intent.1-3-1
 Sec. 1-3102. Requirements for Tribal Council Action.1-3-1
 Sec. 1-3103. Regular Public Tribal Council Meeting.....1-3-2
 Sec. 1-3104. Notice to Tribal Council Members of Tribal Council Meetings.....1-3-2
 Sec. 1-3105. Notice to Tribal Members of Regular Public Tribal Council Meeting.....1-3-3
 Sec. 1-3106. Executive Session of the Tribal Council.....1-3-3
 Sec. 1-3107. Effect of Failure to Comply with Section 1-3102.....1-3-3
 Sec. 1-3108. Tribal Council Protocol.1-3-3

CHAPTER 2. TRIBAL COUNCIL ADJUDICATIVE PROCEDURE.....1-3-4
 Sec. 1-3201. Purpose and Intent.1-3-4
 Sec. 1-3202. Applicability.1-3-4
 Sec. 1-3203. Definitions.1-3-4
 Sec. 1-3204. Presiding Officer.....1-3-4
 Sec. 1-3205. Representation of Parties.1-3-4
 Sec. 1-3206. Time, Place, Manner, and Notice of Hearing.1-3-5

Sec. 1-3207. Order of Hearing	1-3-5
Sec. 1-3208. Receipt of Evidence.	1-3-6
Sec. 1-3209. Witnesses and Oral Testimony.	1-3-6
Sec. 1-3210. Documentary and Physical Evidence.....	1-3-6
Sec. 1-3211. Burden of Proof and Presumptions.	1-3-7
Sec. 1-3212. Decision of Tribal Council.	1-3-7
Sec. 1-3213. Rehearing.	1-3-7
Sec. 1-3214. Appeal.....	1-3-7

TITLE 1. GENERAL PROVISIONS

ARTICLE I

TRIBAL ENACTMENTS

[NOTE: Except as otherwise noted, the provisions of Article I, Title 1 were enacted on February 22, 2002 by Ord. No. 2002-3, § 1, adopted by Res. No. 7-2002.]

CHAPTER 1. ORDINANCES AND RESOLUTIONS

Sec. 1-1101. Maintenance of Enactments.

(a) Whenever an ordinance is enacted or a resolution is passed by the Tribal Council or referendum is approved by the members of the Tribe, the original shall be delivered to the Secretary of the Tribal Council or his designee who shall carefully preserve the original.

(b) Whenever an enacted ordinance or passed resolution is approved by the Secretary of the Interior of the United States or other official of the United States, the Secretary of the Tribal Council shall carefully preserve and maintain the original approval along with the original enacted ordinance or passed resolution.

(c) The Secretary of the Tribal Council or his designee shall cause to be maintained a compilation or compilations of all originals of all ordinances enacted and resolutions passed by the Tribal Council and all referenda approved by the members of the Tribe. Such compilation shall be prima facie legal evidence of the enactments of the Tribe.

(d) The Secretary of the Tribal Council or his designee may make copies or other reproductions of original ordinances, resolutions, and referenda which shall be deemed to be as effective as the originals.

CHAPTER 2. TRIBAL CODE

Sec. 1-1201. Designation.

(a) There is hereby established the official Code of the Sac & Fox Tribe of the Mississippi in Iowa which shall be composed of all ordinances enacted by the members and/or the Tribal Council of the Tribe and all amendments and supplements thereto.

(b) The matter set forth in the official edition of the Code of the Sac & Fox Tribe of the Mississippi in Iowa current at any time shall, together with any then current supplement, if any, establish prima facie the laws of the Tribe, general and permanent in their nature.

TITLE 1

ARTICLE I

(c) The official Code of the Sac & Fox Tribe of the Mississippi in Iowa and all copies thereof shall bear a printed reproduction of the official insignia of the Tribe on the cover, a facsimile signature of the Secretary of the Tribal Council on the title page, and be divided by thumb inserts or other devices into the following parts:

- (1) Constitution and Bylaws of the Sac & Fox Tribe of the Mississippi in Iowa;
- (2) Title 1. General Provisions;
- (3) Title 2. Administration;
- (4) Title 3. Business and Professions;
- (5) Title 4. Commerce;
- (6) Title 5. Dispute Resolution;
- (7) Title 6. Domestic Relations and Children;
- (8) Title 7. Education;
- (9) Title 8. Elections and Voting;
- (10) Title 9. Employment and Labor;
- (11) Title 10. Enrollment;
- (12) Title 11. Gaming;
- (13) Title 12. Health and Safety;
- (14) Title 13. Law and Order;
- (15) Title 14. Natural Resources;
- (16) Title 15. Probate and Trusts;
- (17) Title 16. Property;
- (18) Title 17. Taxation;
- (19) Title 18. Transportation;
- (20) Title 19. Welfare and Institutions; and

(21) such other titles the Tribal Council may designate from time to time.

Sec. 1-1202. Citation.

The Code of the Sac & Fox Tribe of the Mississippi in Iowa adopted and enacted into law by this Article, and as hereafter amended and supplemented and printed and published pursuant to Section 1-1204, shall be known as the Sac & Fox Tribe of the Mississippi in Iowa Code and shall be cited as “SAC & FOX TR. OF MISS. CODE” followed by the number of the title and the number of the chapter and section in the title, separated by a dash. Example: This section shall be cited as “SAC & FOX TR. OF MISS. CODE § 1-1202.”

Sec. 1-1203. Uniform Numbering.

Ordinances codified within the Code shall be organized and numbered in a uniform manner in accordance with the following:

(a) Each title shall be divided into consecutive articles differentiated by upper case roman numerals. Example: This article is Article I.

(b) Each article of each title shall be divided into consecutive chapters differentiated by arabic numerals. Example: This chapter is Chapter 2.

(c) Each chapter of each article shall be divided into consecutive sections which shall be differentiated and numbered as follows:

(1) The first portion of a section number shall begin with the title number, followed by a dash; and

(2) The second portion of a section number shall be followed by the article number represented in arabic form, joined and followed by the chapter number in arabic form, joined and ending in the section number in arabic form of two or more digits, *provided* that in the event a section is added between two existing sections due to amendment or otherwise, consecutive arabic numbers of two or more digits shall be added to the end, separated by a decimal.

Example: this section appears in Title 1, Article I, Chapter 2, and is Section 2, so is designated Section 1-1202 and the next section is designated Section 1-1203; if two sections were added between these existing sections, they would be designated Section 1-1202.01 and Section 1-1202.02, respectively.

(d) When a section of a chapter requires subdivision, it shall be divided in outline form as follows:

- (1) The section shall be divided into subsections differentiated by consecutive lowercase letters contained within parentheses;
- (2) A subsection of a section shall be divided into paragraphs differentiated by consecutive arabic numerals contained within parentheses;
- (3) A paragraph of a subsection shall be divided into subparagraphs differentiated by consecutive lower case roman numerals contained within parentheses;
- (4) A subparagraph of a subsection shall be divided into another level of subparagraphs differentiated by consecutive upper case letters contained within parentheses; and
- (5) That subparagraph of a subparagraph shall be divided into another level of subparagraphs differentiated by consecutive upper case roman numerals contained within parentheses.

Sec. 1-1204. Publication and Availability.

(a) The Executive Director of the Tribe or his designee shall prepare and publish copies of the Code which shall be available for inspection or purchase. The Executive Director may set reasonable fees to be charged for the purchase of copies of the Code in order to recover the costs of preparing and publishing the Code and reproductions thereof.

(b) Whenever an ordinance is enacted by the Tribal Council or referendum approved by the members of the Tribe, the Secretary of the Tribal Council or his designee shall cause a copy of such ordinance or referendum to be delivered to the Executive Director who shall:

- (1) Reproduce the enactment without any enacting clauses, certifications, or signatures; and
- (2) Update the Code, as appropriate, with such enactment.

(c) For the purposes of codification, the Executive Director or his designee is authorized:

- (1) To reformat any and all valid ordinances and referenda in accordance with and to conform to the uniform numbering system established by this Article;
- (2) To break down any and all valid ordinances into articles and chapters in accordance with and to conform to the uniform numbering system established by this Article; and
- (3) To change references contained in any ordinance or referenda to other portions of the same ordinance or referendum or to other ordinances and referenda such that

TITLE 1

ARTICLE I

the references refer in a manner in accordance with and consistent with the uniform numbering system established by this Article.

(d) The Executive Director shall also have the authority to include annotations to enactments within the Code which contain the dates and numeric designation of ordinances and referenda enacting and amending provisions of the Code.

(e) Nothing in this Section shall be construed as authorizing the Executive Director or his designee to change the substance or terms of any enactment or make any other changes to the text and organization of an enactment beyond what is necessary to codify such enactment in a manner consistent with the uniform numbering system established by this Article.

TITLE 1. GENERAL PROVISIONS**ARTICLE II****LAW AND STATUTES**

[NOTE: Except as otherwise noted, the provisions of Article II, Title 1 were enacted on February 22, 2002 by Ord. No. 2002-3, § 2, adopted by Res. No.7-2002.]

CHAPTER 1. GENERAL PROVISIONS**Sec. 1-2101. Principles of Common Law.**

(a) Except as superseded by the Constitution and By-laws of the Tribe or this Code, the custom and traditions of the Tribe are hereby declared to be the common law of the Tribe and shall be the law applicable within the Settlement and shall be the rule of decision in all agencies, departments, commissions, and tribunals of the Tribe.

(b) The common law of the Tribe expressly does not include the common law of any other Indian tribe, the common law of England, the United States or any other foreign jurisdiction nor any interpretation thereunder of the laws of the Tribe by any courts or tribunals other than the courts and tribunals of the Tribe. Nothing in this subsection shall prevent an agency, department, commission, or tribunal of the Tribe from utilizing the laws of another Indian tribe, the United States, or any other foreign jurisdiction for the purpose of guidance and example when permitted by the laws of the Tribe and when no applicable specific Tribal common law is available.

(c) Where possible, the common law of the Tribe shall supplement this Code and this Code shall be interpreted whenever possible as supplementing and not displacing the common law of the Tribe.

Sec. 1-2102. General Rules of Statutory Construction.

In construing the provisions of this Code, unless the context otherwise requires, the following shall apply:

(a) This Code shall be liberally construed to effect its object and purpose and to promote justice;

(b) This Code shall not be construed as waiving or diluting or limiting the sovereignty or jurisdiction of the Tribe; and

(c) Whenever possible, this Code shall be construed as consistent with the common law of the Tribe.

Sec. 1-2103. Headings and Notes.

Except where expressly provided otherwise, headings to titles, articles, chapters, and sections as well as annotations, tables of contents, and other notes within this Code are supplied for the purpose of convenient reference only and do not constitute part of the law.

Sec. 1-2104. Words and Phrases.

(a) Words and phrases shall be construed according to their common and approved meaning and use within the Settlement and nearby surrounding communities.

(b) Technical words and phrases and those which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning.

Sec. 1-2105. Tense, Number, and Gender.

Unless the context requires otherwise, in this Code:

- (a) Words in the present tense include the future and the past tense;
- (b) Words in the singular number include the plural, and words in the plural number include the singular;
- (c) Words of the masculine gender include masculine and feminine genders and the neuter;
- (d) Words of the feminine gender include the feminine and masculine genders and the neuter; and
- (e) Words of the neuter include the neuter and the masculine and feminine genders.

CHAPTER 2. MISCELLANEOUS PROVISIONS**Sec. 1-2201. Effective Date of Enactments.**

(a) When an enactment provides by its terms that it shall take effect on a specified time and date, such enactment shall become effective on the date and time therein specified.

(b) When an enactment provides by its terms that it shall take effect on a specified day only, such enactment shall become effective at midnight on the date specified in the enactment.

(a) When an enactment does not provide by its terms for an effective date, the enactment shall be deemed to take effect immediately.

Sec. 1-2202. Superseding of Prior Enactments.

When an enactment has become a law, no other enactment is continued in force because it is consistent with the subsequent enactment. In all cases governed by the subsequent enactment, the prior enactment and any rules thereunder shall be deemed repealed and abrogated, whether consistent or not with the subsequent enactment, unless the prior enactment is expressly continued in force by the terms of the subsequent enactment.

Sec. 1-2203. Retroactive Effect of Enactments.

No enactment is retroactive unless expressly declared therein.

Sec. 1-2204. Computation of Time.

(a) Whenever a time is prescribed in this Code for the doing of an act or the occurrence of an event, such time shall be calculated by excluding the first day and including the last day.

(b) If the last day in the time prescribed for doing an act is a weekend or legal holiday, it shall be excluded from calculating the time for doing such act.

Sec. 1-2205. Definitions.

Unless the context requires otherwise or another definition is provided for a particular title, article, chapter, or section, in this Code:

(a) “Adult” means a person who is eighteen years of age or older.

(b) “Child” as used in reference to age of persons means a person who is under eighteen years of age or older.

(c) “Code” means the Code of the Sac & Fox Tribe of the Mississippi in Iowa in its entirety.

(d) “Includes” and “including” means not limited to and is not a term of exclusion.

(e) “Laws of the Tribe” means the Constitution and By-Laws of the Sac & Fox Tribe of the Mississippi in Iowa; any ordinances, rules and regulations of the Tribe, or any of its departments, commissions, boards, or agencies; any orders or decisions of the Tribal Council or any other department, commission, board, agency, court or tribunal of the Tribe; and the common law of the Tribe.

(f) “Majority” and “age of majority” as used in reference to the age of persons means the age of eighteen years or more.

(g) “Minor” as used in reference to the age of persons means a person under the age of eighteen years.

(h) “Person” means any individual, sole proprietorship, partnership, association, company, corporation, foundation, labor organization, firm, society, joint stock company, group of organizations or other organized group of individuals.

(i) “Settlement” means the physical territory subject to the jurisdiction of the Tribe as it is described in Article I of the Constitution of the Tribe and shall include the lawful jurisdiction of the Tribe *provided* nothing in this subsection shall be construed to limit the physical territory, jurisdiction or sovereignty of the Tribe.

TITLE 1. GENERAL PROVISIONS

ARTICLE III

TRIBAL COUNCIL PROCEDURE

[NOTE: The provisions of Article III, Title 1 were enacted on _____ by Ord. No. _____, adopted by Res. No. _____.]

CHAPTER 1. GENERAL PROVISIONS

Sec. 1-3101. Purpose and Intent.

Tribal common law establishes that a Tribal Council meeting, and valid Tribal Council action, occurs only if the Tribal Council meets in a public location on the Settlement and if the meeting is open to Tribal members. Meetings of Tribal Council members which occur other than in public on the Settlement are not Tribal Council meetings, and no Tribal Council business may lawfully occur at such gatherings. This Article codifies and supplements these vital principles of Tribal common law, and thereby protects the fundamental right of Tribal members to participate in Tribal governance.

Sec. 1-3102. Requirements for Tribal Council Action.

The Tribal Council can carry out its constitutionally derived powers only if each of the following requirements are met:

- (a) Notice of the meeting at which Tribal Council action is taken must have been provided consistent with this Chapter;
- (b) The Tribal Council meeting must be held on the Settlement at:
 - (1) The Tribal Council chambers at the Tribe’s Community Center; or
 - (2) A different public location if the Tribal Council chambers is rendered unfit for occupation or if the Tribal Council, in its discretion, determines that a larger public space may be needed to accommodate the Tribal members wishing to attend a Tribal Council session;
- (c) A quorum of the Tribal Council, as established under the Constitution and Bylaws, is present at the meeting;
- (d) The Tribal Council action is approved by majority vote of the Tribal Council during a portion of the Tribal Council session which Tribal Council members are permitted to attend; and
- (e) The action is taken at a Regular Public Tribal Council Meeting, if required by section 1-3103.

Sec. 1-3103. Regular Public Tribal Council Meeting.

(a) The Tribal Council must schedule a Regular Public Tribal Council Meeting, as defined by this section, at least once in each calendar month. Where a quorum is not present for the Regular Public Tribal Council Meeting, it shall be continued to the same time of day each subsequent week until a quorum is present.

(b) Tribal Council actions specified in this subsection may only be taken at a Regular Public Tribal Council meeting:

- (1) Adoption of Tribal Ordinances;
- (2) Actions affecting any petition of the membership which has been submitted to the Tribe, or which affects the right of any member to petition or vote;
- (3) Amendment of the Tribe's laws regarding enrollment, dispute resolution, or per capita distributions;
- (4) The sale of any tribally owned interest in real estate;
- (5) Approval of contracts which waive the sovereign immunity of the Tribe or which provide for State or federal jurisdiction over suits against Tribe;
- (6) Tribal Council votes which determine whether an elected or appointed officer will be removed from office;
- (7) Swearing in of Tribal Council members and consideration by the Tribal Council of Tribal Council protocols specified in section 1-3108; and
- (8) Any other matter which other Tribal law requires to be taken at a Regular Public Tribal Council meeting.

Sec. 1-3104. Notice to Tribal Council Members of Tribal Council Meetings.

(a) Unless the Tribal Council determines, in its discretion, that shorter notice is reasonably necessary, notice of a Tribal Council meeting must be served on each Tribal Council member at least three days before the meeting. Service shall be either personal service or service to the Tribal Council member's home by preferred alternative delivery method.

(b) Where the Tribal Council determines that shorter notice is reasonably necessary, notice must be served on each Tribal Council member before the meeting. Service shall be either personal service or service to the Tribal Council member's preferred alternative delivery method.

(c) For purposes of subsection (a) and (b), a Tribal Council member's preferred alternative delivery method means the United States mail unless the Tribal Council member selects, in writing, a different method of alternative delivery. Permissible alternative methods of delivery include: U.S. mail; inter-tribal office mail; electronic message; phone; pager; or other comparable method of non-personal service.

(d) Notice must include the time, date and place of the meeting, but need not include an agenda, unless otherwise required by Tribal law.

(e) Where the tribal common law prohibits a meeting from occurring as scheduled, notice of the rescheduled meeting is adequate if notice of the originally scheduled meeting was adequate and notice of time, date, and location of the rescheduled meeting is posted at the location where the meeting was to have occurred no later than the time and date when the postponed meeting was to have begun.

Sec. 3-3105. Notice to Tribal Members of Regular Public Tribal Council Meeting.

The Tribal Council shall cause notice of the time, date, location, and agenda of a Regular Public Tribal Council meeting to be conspicuously posted on the Settlement for at least seven days immediately preceding the Regular Public Tribal Council meeting. In addition, if a Tribal newsletter or similar publication is mailed or personally delivered to membership in the week before the meeting, the Tribal Council shall cause notice of the time, date and location to be included in that publication.

Sec. 1-3106. Executive Session of the Tribal Council.

(a) The Tribal Council may enter into executive session upon proper motion and second, with a majority vote of the Tribal Council.

(b) All persons shall leave the Tribal Council meeting during an executive session, except the Tribal Council members, any persons necessary to the matters to be discussed, and any other person permitted by the Tribal Council to remain.

(c) During executive session, no minutes shall be taken or recorded.

(d) The Tribal Council shall not act on any motion or otherwise conduct any vote while in executive session. The Tribal Council shall act on a matter discussed in executive session by terminating the executive session and then acting on the matter.

Sec. 1-3107. Effect of Failure to Comply with Section 1-3102.

Where Tribal Council action is taken without compliance with section 1-3102, the action is not an action of the Tribe or its Tribal Council. If the action included approval of a contract or authorization for any tribal officer to sign a contract on behalf of the Tribe, the contract is unenforceable because it is in violation of public policy; and in an action filed by the Tribe, a court may award restitution to the Tribe, but may not award restitution to any other party to the purported contract. Any resolution or ordinance adopted without compliance with section 1-3102 is void.

Sec. 1-3108. Tribal Council Protocol.

Within six months of the enactment of this Chapter, the Tribal Council shall create a Protocol for Tribal Council members, which will define the expected norms for Tribal Council member interaction with Tribal members and Tribal employees. Thereafter, when each new Tribal Council takes office, it shall review

that protocol, make any amendments deemed appropriate to accurately reflect the norms expected of the members of that Council, and then affirm or reaffirm the protocol.

CHAPTER 2. TRIBAL COUNCIL ADJUDICATIVE PROCEDURE

Sec. 1-3201. Purpose and intent.

The Tribe's Constitution, statutory law, and common law permits or requires the Tribal Council to hold adjudicative and quasi-adjudicative hearings on a wide variety of matters. Because of this wide variety of contexts in which the Tribal Council exercises adjudicative or quasi-adjudicative authority, the procedures which are appropriate will also vary. Through this chapter, the Tribe establishes the default set of procedures applicable to the Tribal Council's adjudicative or quasi-adjudicative hearings. Each section of this chapter will apply unless, by Tribal Council resolution or by Tribal Council directive or order applicable to the hearing, the Tribal Council clearly provides for a procedure which is contrary to these default procedures.

Sec. 1-3202. Applicability.

The procedures specified in this section shall apply to:

- (a) Tribal Council hearings to determine whether a person who is, was, or claims to have been a former officer, agent, or other official of the Tribe has returned all Tribal governmental property.
- (b) Tribal Council hearings to consider the removal of a Gaming Commissioner;
- (c) Tribal Council hearings to consider the removal of Election Committee members;
- (d) Any other matter in which the Tribal Council holds an adjudicative or quasi-adjudicative hearing, to the extent the Tribal Council does not modify the procedures herein by resolution or Tribal Council directive or order applicable to that hearing.

Sec. 1-3203. Definitions.

- (a) "Examinee" shall mean the Gaming Commissioner; Election Committee member; former tribal officer, agent, or official; or other person or entity whose status or actions are the subject of the hearing
- (b) "Hearing Examiner" shall mean the Tribe's General Legal Counsel or a lay advocate designated by General Legal Counsel to perform the duties of hearing examiner as stated in this code.

Sec. 1-3204. Presiding Officer.

The Chairman of the Tribal Council shall be the Presiding Officer and shall preside over the hearing, and shall call the proceedings to order, control the presentation of evidence, the appearance of witnesses, and the order of the proceedings. In the event the Chairman is unable, for any reason, to fulfill his duties, then the Vice-Chairman of the Tribal Council shall preside in the Chairman's place.

Sec. 1-3205. Representation of Parties.

(a) The Tribe shall be represented by the Hearing Examiner.

(b) Examinee may represent himself or may choose to be represented by an attorney or lay advocate qualified to practice law on the Settlement. Examinee's representation shall be at Examinee's expense, unless the Council, in its discretion, by written resolution, at a Regular Public Tribal Council meeting under section 1-3103, decides to retain a representative for Examinee.

Sec. 1-3206. Time, Place, Manner, and Notice of Hearing.

(a) The Presiding Officer shall set the time and date for hearing and shall cause notice of the hearing to be provided to the Tribal Council and the Examinee. Written notice of the Hearing shall be provided to the Tribal Council consistent with section 1-3104, and shall be provided to Examinee, by personal service or certified mail, at least seven calendar days prior to the hearing. For service by mail, service is effective on the date the document is placed in the U.S. mail.

(b) Upon motion of a member of the Tribal Council, the hearing can be continued to permit further investigation by the Council of assertions made by the Examinee, investigation of the nature of documents introduced during the hearing, or for such other purposes deemed appropriate or necessary to ascertain the truth of the matters asserted.

(c) The location of the hearing shall be consistent with section 1-3102(b), and the hearing shall be open to all Tribal members, provided that the Presiding Officer shall have discretion to sequester any potential witness other than Examinee.

Sec. 1-3207. Order of Hearing.

The hearing shall be conducted in accordance with the following, subject to the discretion of the Presiding Officer:

(a) The Hearing Examiner and Examinee may make brief opening statements.

(b) The Hearing Examiner may present relevant evidence. Examinee may then present relevant evidence, and the Hearing Examiner may present any rebuttal evidence. Each witness shall be subject to cross-examination. Redirect by a party, if desired, shall occur after each witness' cross-examination, if conducted. The Presiding Officer may vary the presentation of evidence, provided that the parties shall have a full and equal opportunity to present evidence.

(c) A person may speak only when recognized by the Presiding Officer, in response to questioning permitted under these guidelines, or otherwise when explicitly or implicitly permitted to speak under applicable procedure.

(d) Tribal Council members may, upon recognition by the Presiding Officer, interrogate any witness.

(e) At the conclusion of the evidence, the Hearing Examiner, followed by the Examinee, shall be provided an opportunity to present a brief closing statement, based on the evidence presented.

Sec. 1-3208. Receipt of Evidence.

All testimony and other evidence shall be received according to the following:

- (a) State or federal Court rules of evidence are not applicable. The applicable rule of evidence shall be that evidence shall be received in a fair and just manner, and that any relevant evidence may be admitted and is sufficient in itself to support a finding if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in a civil action.
- (b) Evidence may include relevant and reliable hearsay evidence if such evidence is not the sole basis for the final decision.
- (c) Affidavits may be received in evidence.
- (d) Common law privileges, such as the attorney/client privilege, shall apply.
- (e) Character testimony may be received.
- (f) The Presiding Officer may exclude evidence that would be overly confusing, repetitious, or lacks sufficient reliability.
- (g) A party may give reasons for or against the admission of preferred evidence, but the Presiding Officer shall have sole discretion to accept or decline the evidence.

Sec. 1-3209. Witnesses and Oral Testimony.

Witnesses shall be heard and oral testimony received according to the following:

- (a) All testimony shall be taken under oath or affirmation administered by the Tribal Council or its designee.
- (b) Oral testimony shall be permitted and any party shall have the right to call and examine witnesses.
- (c) Any party may cross-examine opposing witnesses on any matters relevant to the issues of the hearing, even though the matter was not covered in a direct examination.
- (d) Any party may impeach any witness regardless of which party first called the witness to testify.
- (e) The Presiding Officer shall exercise discretion to limit the testimony of witnesses where that testimony is argumentative or repetitive.

Sec. 1-3210. Documentary and Physical Evidence.

Documentary evidence, physical evidence, and other exhibits relevant to the issues of the hearing may be introduced by any party. A copy of any documentary evidence or other reproducible evidence shall be provided to all other parties at the time it is proffered. All opposing parties shall be given a reasonable time to examine any physical evidence or other non-reproducible evidence at the time it is proffered. Parties need not provide copies of video recordings, audio recordings, and other similar media proffered as evidence, but any such media or portion of such media a party wishes to have entered into evidence shall be played in the hearing for the Tribal Council and all parties to examine.

Sec. 1-3211. Burden of Proof and Presumptions.

(a) For hearings under section 1-3202(a), a rebuttable presumption shall exist that an Examinee has possession or control of all property which a person in Examinee's claimed office should have possessed or controlled, and the Examinee shall have the burden of overcoming that presumption by a preponderance of the evidence;

(b) For hearings under section 1-3202(b-c), the Hearing Examiner shall have the burden of proving grounds for removal by a preponderance of the evidence.

(c) For hearings under section 1-3202(d), the Hearing Examiner shall have the burden of proof by a preponderance of the evidence.

Sec. 1-3212. Decision of Tribal Council.

At least a quorum of the Tribal Council shall be present during the hearing and the same Tribal Council members shall be present throughout the entire hearing. The Tribal Council shall determine the ultimate issues of the hearing by a majority vote of the Tribal Council members present throughout the hearing, and the Council shall issue a written decision, which may, in the Council's discretion, include findings of fact and conclusions of law.

Sec. 1-3213. Rehearing.

There shall be no right to rehearing, except that an Examinee who is found to have possession or control of Tribal property in a hearing under section 1-3202(a) may request a limited rehearing after Examinee believes he or she has returned that property. In that limited rehearing, all of the rules herein shall apply, except that:

(a) The Tribal Council's prior findings regarding the property which was in Examinee's property or control is binding and may not be impeached at rehearing; and

(b) The sole issue at rehearing shall be whether Examinee has returned the Tribal governmental property which were previously determined to be in his or her control.

Sec. 1-3214. Appeal.

An examinee shall have a limited right to request review by the Tribal Appellate Court, and the Tribal Appellate Court shall have limited authority to grant relief. Except for the limited right and limited

TITLE 1

ARTICLE III

remedies explicitly permitted herein, the Appellate Court shall have no authority to review the substance or procedure of the Tribal Council's action or decision.

- (a) The sole permissible inquiries during Tribal Appellate Court review shall be:
- (1) Did the Tribal Council provide due process of law to the Examinee; and
 - (2) Are the Tribal Council's conclusions of law arbitrary and capricious.

(b) A request for Tribal Appellate Court review must be received by the Court and by the Hearing Examiner within fourteen days of the date the Tribal Council placed the written order in the mail to the Examinee. The request for review must be accompanied by Examinee's appellate brief. Failure to deliver the request for review or brief to the Court or Hearing Examiner within the time specified shall deprive the Appellate Court of jurisdiction. The Hearing Examiner shall file a responsive appellate brief within fourteen days of receipt of the Examinee's brief, and the Court shall enter its decision within fourteen days of receipt of the Hearing Examiner's brief.

(c) The Tribal Council decision may be stayed pending appeal only as provided in this subsection. For appeals after hearings under section 1-3202(a) and section 1-3202(d), the Court may stay the Tribal Council decision pending appeal only by written order, which is effective only upon receipt by both the Tribal Chairman and the Executive Director. For appeals after hearings under section 1-3202(b-c), the appeal does not stay the removal of the officer, but does stay the Tribal Council's authority to appointing a replacement while the appeal is pending.

(d) If Examinee was not accorded due process, or if the conclusions of law were arbitrary and capricious, the sole remedy shall be remand to the Tribal Council for reconsideration.