

Fort Peck Tribal Court
807 Court Avenue - P.O. Box 1027
Poplar, MT 59255



Appendix 7 - Rules of Procedure for the Judicial Conduct Commission

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Rule 1. Scope of Rules

(a) *Scope.* These rules apply to all the functions, responsibilities, and proceedings of the Judicial Conduct Commission involving the removal, retirement, suspension, censure, reprimand, and other discipline of judges pursuant to Section 5, Article VII of the Constitution of the Assiniboine and Sioux Tribes, and the provisions of Title 2, Chapter 3, Section 306, of the Comprehensive Code of Justice.

(b) *Purpose.* The purpose of the Judicial Conduct Commission and these rules is to protect the

public from improper conduct or behavior of judges; preserve the integrity of the judicial process; maintain public confidence in the judiciary; create a greater awareness of proper judicial conduct on the part of the judiciary and the public; and provide for the expeditious and fair disposition of complaints of judicial misconduct.

Rule 2. Organization of the Commission

(a) The Fort Peck Court of Appeals (FPCA) shall be the Judicial Conduct Commission.

(b) The Chief Justice of the FPCA shall be the Chairperson of the Commission.

(c) The Chief Justice or designee of the Chief Justice shall preside at the meetings of the Commission as well as formal hearings concerning the conduct or disability of a judge.

(d) Any member of the Commission is authorized to administer oaths or affirmations to all witnesses appearing before the Commission.

(e) All records of the Commission shall remain confidential except as hereinafter specified and shall be under the exclusive and continuing control of the Judicial Conduct Commission and its staff. In the conduct of the business of the Commission, including the appointment of an investigator or attorney, to facilitate the coordination of investigations with other agencies, and to avoid duplicative expense relative to the investigation, the Commission is authorized to utilize the same personnel who are involved in an agency investigation of the same factual allegations of misconduct or disability that is before the Commission. The permission of the Chairperson of the Commission is required prior to the release of records to anyone other than Commission members, the Court Administrator and the Chairman of the Fort Peck Tribes.

(f) The records of the Commission shall be maintained in the Court Administrator's office pursuant to these rules.

Rule 3. Staff of the Commission

(a) The Court Administrator shall select a clerk whose duty it shall be to record minutes of the meetings and hearings which shall be a permanent record of the actions of the Commission. The secretary shall be responsible for the custody and safekeeping of all the records of the Commission. The secretary shall promptly furnish to members of the Commission copies of all complaints, notices, answers and other documents filed in connection with proceedings before the Commission.

(b) The Commission may appoint a qualified adult to investigate charges against a judge and to report findings to the Commission, and to otherwise assist the Commission in its inquiry into the conduct or disability of a judge.

(c) The Commission may appoint the Fort Peck Tribal Court Prosecutor (Prosecutor) to marshal and present evidence, to file a formal complaint, and to prosecute a formal complaint before the Commission in its inquiry into the conduct or disability of a judge.

(d) An individual appointed by the Commission under (b) above shall be paid as determined from time to time by the Commission from funds provided for the operation of the Commission.

Rule 4. Meeting

(a) The Commission shall meet 4 times a year or more often as the business of the Commission shall require.

(b) The Chairperson may, and upon the request of another member shall, call a meeting of the Commission. The Chairperson shall give reasonable notice to each member by telephone or other means of the time and place of the meeting.

(c) A quorum for the transaction of business of the Commission shall be 2 members and no action of the Commission shall be valid unless agreed to by no less than 2 members thereof.

(d) Decisions by the Commission to conduct an investigation of a judge, order a judge to submit to a physical examination, proceed against a person for contempt for failing to respond to a subpoena of the Commission, issue a public opinion or statement, hold or dispense with a formal hearing, hear additional evidence, make a report to the Tribal Executive Board (TEB) recommending removal, retirement, or other discipline of a judge, or determine after a formal hearing not to make such a report, shall be made at a meeting of the Commission. Other matters before the Commission may be determined by communication among the members of the Commission, but a report of such action shall be made by the Chairperson at the next meeting of the Commission and entered in the minutes of that meeting.

Rule 5. Interested Member of Commission

In the event a member of the Commission recuses himself or herself from acting in a particular proceeding, the Chairperson may appoint a

sitting judge, a retired judge or a judge from another tribe to act as a member of the Commission to sit and act in the place of the disqualified or recused member.

If the complaint is against a justice of the FPCA, the justice shall recuse himself or herself. If the complaint is against the Chairperson, the next senior justice shall appoint another judge.

Rule 6. Proceedings Confidential

(a) All papers filed herewith and all proceedings before the Commission shall be confidential while pending before the Commission. A Complaint dismissed by the Commission under Rule 9(e)-(f) is no longer confidential, and a complainant may disclose the complaint and the Commission's response. If an investigation results in formal proceedings, then the record loses its confidential character.

(b) All notices, pleadings and papers mailed to a judge and to other persons pursuant to these Rules shall be marked "personal and confidential."

(c) Every witness in every proceeding under these Rules shall be sworn to tell the truth and not to disclose the existence of the proceeding or the identity of the judge until the proceedings are no longer confidential under these rules. Violation of the confidentiality of proceedings may result in summary dismissal of the complaint.

(d) If a judge voluntarily retires or resigns prior to the institution of formal proceedings, and agrees not to act as a judge at any time in the future, all proceedings against such judge shall terminate, or, in the discretion of the Commission, may be held in abeyance to a date certain determined by the Commission, and the files of the Commission concerning the judge shall remain confidential.

Rule 7. Immunity

Members of the Commission, investigators, special or appointed counsel, and staff members shall be immune from suit for any conduct in the course of their official duties. All persons referenced above are deemed officers and/or agents of

the Commission for all persons mentioned in these rules

Rule 8. Jurisdiction and Grounds for Discipline

(a) The Commission shall have jurisdiction over the conduct of all judges, including part-time judges. Jurisdiction of the Commission also extends to conduct that occurred while a judge is in office, or acting as a retired judge, and may include conduct that is not in connection with judicial duties.

(b) Grounds for discipline or removal include, but are not limited to:

(1) Any disability that seriously interferes with the performance of the judge's duty and is or may become permanent;

(2) Willful and persistent failure to perform judicial duties, including consistent failure to make decisions in a timely manner;

(3) Willful misconduct in office;

(4) Impropriety or other conduct prejudicial to the administration of justice that brings the judicial office into disrepute;

(5) Habitual intemperance;

(6) Ex parte communications except as allowed by statute or rule; or

(7) Violation of the provisions of the Code of Judicial Conduct.

(c) The Commission may impose, or recommend to the Tribal Executive Board, the following:

(1) Admonition: A private communication from the Commission to a judge reminding the judge of ethical responsibilities and giving a warning to avoid future misconduct or inappropriate practices. An admonition may be used to give authoritative advice and encouragement or to express disapproval of behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct.

(2) Private Reprimand: A private communication from the Commission to a judge that declares the judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to merit a public sanction.

(3) Public Reprimand: A public reprimand administered by the Commission which declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to warrant a censure.

(4) Censure: A public declaration by the Commission that a judge is guilty of misconduct that does not require suspension or removal from office. Censure may be ordered in conjunction with other sanctions.

(5) Suspension: A decision by the Commission and ratified by majority vote of the TEB to suspend a judge from office temporarily, with or without pay, for serious misconduct that merits more than censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension.

(6) Removal: A decision by the Commission and ratified by secret ballot of a two-thirds (2/3) majority vote of the TEB, at a meeting at which a quorum was present, to remove a judge from office for serious misconduct.

(7) Permanent Removal: A decision by the Commission and ratified by secret ballot of a two-thirds (2/3) majority vote of the TEB, at a meeting at which a quorum was present, to remove a judge permanently from office for serious misconduct and declares that such person may never again hold a judicial office on the Fort Peck Reservation.

(8) Retirement: A decision by the Commission and ratified by secret ballot of a two-thirds majority vote of the TEB, at a meeting at which a quorum was present, to retire a judge for a disability that seriously interferes with the performance of judicial duties that is or is likely to become permanent.

A decision by the TEB to remove or retire a judge shall be final.

Rule 9. Complaints – Initial Investigations

(a) Written complaints to the Commission shall be submitted substantially as provided on the attached "Form A". Complaints shall be lodged with the Court Administrator.

(b) A written complaint shall not be a prerequisite to initiation of disciplinary proceedings that

the Commission, in its discretion, deems appropriate.

(c) Upon receiving a complaint or otherwise receiving information alleging judicial misconduct or that the Commission should take some action, the Commission may request written comments from the judge with respect to the matters involved as the judge may wish to make, or may request a response from the judge. At the discretion of the Commission, the Commission may conduct an investigation into the conduct or condition of the judge for the purpose of determining whether formal proceedings should be instituted and a hearing held with or without provision of notice or other information to the judge. However, prior to any determination that a formal hearing will be held, the judge shall be sent a copy of the complaint, or a synopsis of the matters to be or that have been investigated, and the judge shall thereafter have reasonable opportunity to provide a statement to the Commission as the judge considers appropriate. The judge may elect to make the statement personally or through counsel, verbally or in writing and the statement may or may not be given under oath. In exercising this right to respond, the judge shall not have the right to call witnesses or to confront or cross-examine the person making the complaint or any person interviewed by the Commission or its duly authorized representative. After notification from the Commission, if the judge does not respond with a reasonable time or within the time fixed by the Commission, the right to make a responsive statement shall be deemed waived.

(d) In making an investigation, the Commission shall have the authority to issue subpoenas for witnesses to appear before the Commission or its representative for the purpose of making a sworn statement and may also issue subpoenas for the production of books, papers and other evidence that may be pertinent to the Commission's inquiry.

(e) Whenever the Commission reaches the conclusion that facts developed upon an initial investigation fail to show any reason for the institution of disciplinary proceedings, the Commission will dismiss the complaint, terminate the inquiry, and

so advise the complainant. At the same time, the complainant shall be informed of the confidentiality provisions of Rule 6. The Commission shall also notify the judge of the Commission's decision.

(f) A complaint may be summarily rejected and dismissed by the Commission if, in the judgment of the Commission, the complaint fails to state adequate grounds for disciplinary proceedings or is a matter for appellate review. The Commission may, but it is not required to, advise the judge of the summary dismissal of the complaint.

(g) After receipt of a complaint or of information indicating that a judge may have engaged in judicial misconduct, or that a judge may be disabled, the Commission, before voting to hold a formal hearing, may delegate to one or more of its members or to the Commission's attorney or investigator, the authority and responsibility to personally and confidentially confer with the judge subject to the inquiry, and to make informal recommendations to the judge or to the judge's attorney concerning the subject matter of the inquiry and a satisfactory disposition thereof. If the judge agrees to the Commission's suggested disposition, the matter may be disposed of on the basis of the agreement reached. If the agreed disposition is to be made public, the Commission shall file a report of such disposition in the office of the Court Administrator and the disposition shall become a matter of public record.

(h) The Commission may at any time entertain and act upon a proposal from a judge for disposition of any matter pending before the Commission concerning such judge. If the proposal is made after the filing of a formal complaint, and is acceptable to the Commission, a report thereof shall be filed in the office of the Court Administrator, and the report shall be a matter of public record.

Rule 10. Formal Complaint

(a) If, after an initial investigation, a majority of the Commission find grounds to conduct formal proceedings concerning a complaint or other facts brought to the attention of the Commission, the

Commission shall appoint the Prosecutor as provided in Rule 3(c) to file a formal complaint against the judge in the office of the Court Administrator and to prosecute the formal complaint before the Commission.

(b) Upon the filing of a formal complaint, the complaint and all proceedings subsequent to its filing are not considered confidential and shall become a matter of public record.

Rule 11. Procedure on Formal Complaint

(a) The formal complaint shall state the name(s) of the complainant(s), the nature of the alleged grounds for discipline or request for the judge to be ordered to submit to a physical examination, the time of actions giving rise to alleged wrongdoing and a brief summary of the facts upon which allegations of misconduct are based.

(b) A notice of the filing of the formal complaint together with a copy of the complaint shall be served on the judge. The notice shall advise the judge of the name, address, and telephone number of the Prosecutor and of the right to file a written response with the Court Administrator within 15 working days after the complaint has been served upon the judge.

(c) Service of the notice and a copy of the formal complaint shall be made on the judge by personal service as provided in 8 CCOJ 102. Service of the notice and a copy of the complaint may be acknowledged by the judge or the judge's attorney.

(d) The judge may file a written response to the allegations of the formal complaint within 15 working days after service. Thereafter, the Commission may set a hearing on the complaint. The hearing shall be set no sooner than 30 working days after the time for filing a response has expired or after a response is filed. The hearing shall be set as promptly as possible considering the particular circumstances of the matter.

(e) The Chairperson shall appoint a member of the Commission, who may be the Chairperson, to hear and determine preliminary matters prior to the hearing, set dates, make necessary rulings, make discovery orders, order subpoenas issued, and make such orders necessary to assure the

hearing is conducted promptly and that both the complainant and the responding judge have the opportunity to fully and fairly prepare for the hearing. The orders of the member selected shall have the same force as an order of the Commission unless quashed by a majority of the members thereof.

(f) The responding judge shall, upon request, be provided access to the information upon which the formal complaint is based, including the initial complaint, statements of the complainant, witnesses, and other physical and documentary evidence. The responding judge shall, upon request, be provided with the names and last known address of witnesses who will be called to testify at the hearing together with copies of all evidence the Prosecutor intends to introduce at the hearing. The judge shall, upon request, provide the Prosecutor with the names and addresses of the witnesses the judge intends to call to testify at the hearing, together with copies of all documentary evidence intended to be introduced by the judge at the hearing. Depositions may be taken only upon order of the Commission upon application showing the necessity therefor. Other discovery procedures such as interrogatories, requests for admissions, or requests for production may be undertaken only upon order of the Commission after application and a showing of the necessity therefor.

(g) The clerk for the Commission shall not be required to issue any subpoena except upon direct order of the Commission. Payment of witness fees and mileage shall be as provided for witnesses in a tribal court proceeding.

Rule 12. Hearing on Formal Complaint

(a) At the time and place set for hearing, the Prosecutor shall present the case in support of the charges in the formal complaint.

(b) A verbatim record shall be made of the hearing. The Commission may, in its discretion, order that a transcript of the proceedings be made. When a transcript of the hearing has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge and counsel. The judge shall have

the right, without any order or approval, to have all or any testimony in the proceedings transcribed at the judge's expense.

(c) The Chairperson or designee shall preside at the hearing. The hearing shall be conducted according to the Federal Rules of Evidence.

(d) The responding judge shall appear at the hearing and may, in the judge's discretion, testify at the hearing.

(e) The Prosecutor shall have the burden of proof and shall open and close the evidence. Any misconduct or incapacity alleged against the responding judge must be proven by clear and convincing evidence. The responding judge shall have the right, but is not required, to present evidence in defense of the complaint.

(f) At the conclusion of the hearing, the Commission may order further written arguments or submissions as it deems appropriate, including proposed findings of fact and conclusions of law. Thereafter, the matter shall be deemed submitted for decision, unless the Commission orders otherwise.

(g) Deliberations of the Commission shall be confidential. The Commission shall render its decision, and any recommendation(s) to the TEB, if necessary, in writing. The Commission's decision shall be filed in the office of the Court Administrator and charges dismissed or recommendation(s) transmitted to the TEB, whichever is necessary.

(h) Should less than a majority of the Commission vote affirmatively for the censure, suspension, retirement or removal of a responding judge, the formal complaint shall be dismissed in favor of the judge, who shall be entitled to the costs paid or incurred for subpoenas, witness fees and mileage, and any depositions ordered by the Commission.

Rule 13. Interim Disqualification of Judge

Upon the Commission's filing with the TEB a recommendation that a judge be removed or retired, the judge shall forthwith be disqualified to serve as a judge, without loss of salary, pending

the ratification by the TEB. If a judge is reinstated to office, the terms of the reinstatement shall be as ordered by the TEB.

(APPROVED BY RESOLUTION NO. 28-0393-2016-02, 2/22/16.)

FORM A

JUDICIAL CONDUCT COMMISSION

FORT PECK TRIBES

COMPLAINT

The undersigned being first duly sworn, upon oath, states the following facts showing misconduct on the part of the following named judge:

NAME OF JUDGE: _____

ADDRESS: _____

Based on the attached Judicial Code of Conduct, please cite which Canon(s) you feel the judge has violated and why.

The facts of the above Judge's misconduct or unethical conduct are as follows: (Please state in your own words the misconduct or unethical conduct with information as to when and where the misconduct occurred, and names of other people involved.)

(If more space is needed, you may attach additional sheets to this complaint and mark them a, b, c, etc.)

The names and addresses of other persons who are witnesses to or have information as to the misconduct of the above judge are:

NAME: _____ NAME: _____
ADDRESS: _____ AD-
DRESS: _____
PHONE NO: _____ PHONE
NO: _____

(Names of additional witnesses may be listed on a separate sheet and attached.)

I (have ____ / have not ____) contacted the judge in regard to my complaint.

I will furnish additional information to your Commission if requested. If the complaint is investigated, I will cooperate with your Commission and furnish the evidence I have and will testify at any hearing on this complaint.

My full name, address and telephone number is:

NAME _____
ADDRESS: _____
PHONE #: _____

DATED this ____ day of _____, 20__.

Signature

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 20__.

(SEAL) _____ Notary Public for the State Montana _____ Residing _____ at _____

My Commission expires _____

RETURN TO: Rita Weeks, Administrator
Fort Peck Tribal Court
P.O. Box 1027
Poplar, MT 59255