SAC & FOX NATION GRIEVANCE COMMITTEE PROCEDURE ACT OF 2015

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Section 1. Name

This Title may be called the "GRIEVANCE COMMITTEE PROCEDURE ACT OF 2015" It is referred to in the provisions below as "the Act."

Section 2. Purpose and Scope

(A) It is the purpose of this Act to establish simple, fair, straightforward, and efficient procedures to govern the removal of elected Business Committee members, to protect Business Committee members from abuse of the Constitutional removal process for political purposes, and to protect and maintain the right of all the Nation's members to protect themselves and the Nation from criminal or other reprehensible acts by Business Committee members. Whenever the meaning of any provision of this Act may be unclear, it shall be interpreted in such a way as to further the purposes described in this Section.

(B) This Act:

(1) states the findings of the Sac and Fox Nation relative to the removal of members of the Business Committee;

(2) sets forth formal procedures and legal principles to be applied in hearings by the Grievance Committee and the Governing Council to consider charges of misconduct in office against members of the Business Committee;

(3) provides for notice of any Governing Council meeting called for the purpose of considering the removal of members of the Business Committee; and

(4) provides for judicial review by the Tribal Court of decisions by the Governing Council to remove a member of the Business Committee from office.

Section 3. Findings

The Governing Council finds that the following circumstances exist within the Tribal Government of the Sac and Fox Nation:

(A) That various political groups within the Sac and Fox Nation have arisen, each of which are seriously concerned about the future course of the Nation.

(B) That the views of these political groups differ as to the most appropriate directions for the Nation to take in its actions.

(C) That, while various viewpoints and dissenting views are a positive sign of deep concern about the future of the Sac and Fox people, there is a danger that some Tribal members may attempt to use the Constitutional process for removal of Business Committee members for political reasons rather than for their intended purpose, which is to protect the Nation against criminal and other reprehensible actions of Business Committee members.

(D) That the political abuse of the Constitutional process for removal of Business Committee members has a detrimental effect upon the whole Nation.

(E) That the abuse of the Constitutional removal process is a direct result of the lack of a clearly defined removal procedure which provides direction to the Grievance Committee in the resolution of complaints, and provides sufficient procedural rules for the application of the Constitutional process of removal of Business Committee members to protect the Nation, its officers, and the Tribal members against arbitrary and capricious or politically motivated actions.

(F) That it is in the best interest of the Nation and its members that specific procedures be provided to govern the removal of Business Committee members pursuant to Article VIII of the Tribal Constitution.

(G) That it is in the best interest of the Nation and its members that the procedures for the removal of Business Committee members (1) are easy to understand, such that a person does not need to use a lawyer to bring or defend a complaint; (2) are efficient, such that the complaint process does not take an excessive amount of time; and (3) give due process to all parties concerned.

Section 4. Definitions

The following definitions shall apply throughout this Act unless another meaning is clearly indicated:

(A) "Committee" shall mean the Grievance Committee of the Sac and Fox Nation.

(B) "Committee Member" shall mean any individual member of the Grievance Committee.

(C) "Complaint" shall mean a formal grievance to the Grievance Committee, seeking the removal of a member of the Business Committee, accompanied by a filing fee, to be resolved under this Act.

(D) "Complainant" shall mean any citizen of the Nation bringing a Complaint for the removal of a member of the Business Committee.

(E) "Respondent" means a member of the Business Committee against whom a Complaint for removal has been filed.

(F) "Public servant" means any of the following:

(1) any person serving in any department or agency exercising regulatory functions, or conducting inspections or investigations, or having custody of prisoners, or carrying on civil or criminal litigation on behalf of the Nation or government;

(2) any person having any discretion in connection with contracts, purchases, payments, claims or other valuable transactions of the Nation or government;

(3) any person having judicial, legislative, or administrative authority, or employed by a body having such authority, or being involved in the enforcement of such a body's decisions.

(G) "Document" shall be deemed to include writings appearing both on paper and in electronic form.

(H) "Misconduct in office" shall mean any one or more of the following acts: (1) excessive absence from Business Committee meetings, (2) pleading guilty to or being convicted of a felony within the past 10 years, (3) bribery, (4) improper influence in official matters, (5) abuse of office, (6) wrongfully asserting office, (7) wrongfully withholding the official seal or documents, (8) official oppression, (9) misusing public money, (10) lying, (11) tampering with witnesses, (12) tampering with evidence, (13) tampering with public records. These acts are further defined below.

(1) One commits misconduct by excessive absence from Business Committee meetings if he[1] is absent from four (4) consecutive Business Committee meetings without reasonable cause for such absences.

(2) One commits misconduct by pleading guilty to a felony or by being convicted of a felony in any court within the ten years prior to taking office.

(3) One commits misconduct by bribery if he offers, gives or agrees to give, or asks for, accepts or agrees to accept any benefit in exchange for the recipient's past, present, or future decision, opinion, recommendation, vote, use of discretion, violation of duty, or exertion of special influence as a Tribal or governmental officer or employee, as a public servant, as an official of a party, or as a voter.

This section shall not apply to gifts or other benefits given on account of cultural tradition or other personal, professional or business relationship independent of the official status of the recipient or to trivial benefits

[1] In this Act, the pronoun "he" is used for grammatical simplicity and is meant to include both "he" and "she."

incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(4) One commits misconduct by improper influence in official matters if he:

(a) threatens unlawful harm to any person for the purpose of influencing or retaliating for the decision, opinion, recommendation, vote, use of discretion, or execution of duty of a Tribal official, public servant, party official, or voter; or

(b) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any communication designed to influence the outcome with arguments other than those authorized by law.

(5) A public servant commits misconduct by abuse of office if:

(a) he knowingly commits an unauthorized act which he claims is an act of his office, or knowingly refrains from performing a duty imposed on him by law or the nature of his office; or

(b) he acquires non-public information by virtue of his office or from another public servant, and on the basis of that information acquires or rids himself of a valuable interest in any property, transaction, or enterprise which the information concerns; or speculates or wagers on the basis of such information; or knowingly aids another to do any of these acts.

(6) One commits misconduct by wrongfully asserting office if he exercises or attempts to exercise any of the functions of a public office when:

(a) he has not been elected or appointed to office; or

(b) he has not taken and filed the required oath of office; or

(c) he has failed to execute and file the required bond; or

(d) he exercises any of the functions of his office after his term has ended and his replacement has been elected or appointed and has been sworn in; or

(e) he exercises any of the functions of his office after he has been legally removed from office.

(7) One commits misconduct by knowingly withholding or retaining from his replacement in office or other person entitled to possession the official seal or any documents relating or belonging to his office, or by mutilating, destroying, or taking away such seal or document.

(8) One commits misconduct by official oppression if, when acting or claiming to act in an official capacity, he knowingly subjects another to illegal arrest, detention, search, seizure, mistreatment, taking of property, assessment, lien or other infringement of personal or property rights.

(9) One commits misconduct by misusing public money if, being a public servant or other person charged with the receipt, safekeeping, transfer or paying out of public monies, he:

(a) uses, without lawful authority, the money or any portion of it for his own use or the use of another; or

(b) loans the money or any portion of it without lawful authority; or

(c) fails to keep the money in his possession until lawfully paid out; or

(d) deposits the money in a bank without lawful authority or with a person not lawfully authorized to receive it; or

(e) knowingly keeps any false account, or makes a false entry or deletion in any account of or relating to the money; or

(f) fraudulently alters, falsifies, conceals, or destroys any account of or relating to the money; or

(g) upon lawful demand knowingly refuses or fails to pay over or transfer any public monies in his hands; or

(h) uses public monies to make an unlawful profit for himself or another; or

(i) handles public money in a reckless manner thereby creating a significant risk of loss.

(10) One commits misconduct by lying if he is under oath or communicating with a public servant who is performing his official function and he

(a) knowingly makes a false spoken or written statement, or

(b) knowingly fails to speak or write information necessary to keep other statements from being misleading, or

(c) submits or invites reliance upon any writing, sample, specimen, map, boundary mark, or other object which he knows to be false, forged, altered or otherwise lacking in authenticity.

It is no defense to a charge of lying that the person making the false statement believed the falsification to be unimportant to the course or outcome of a proceeding or to the public servant's decisions.

A document signed by a person shall be presumed to have been written or verified by that person, unless fraud, unlawful coercion, or forgery is proven.

(11) One commits misconduct by tampering with witnesses if he believes that an official proceeding or investigation has been undertaken or is about to begin and he attempts to persuade, threaten, bribe, or otherwise cause a person to:

(a) testify or inform falsely; or

(b) withhold any testimony, information, document or thing; or

(c) avoid legal process summoning him to testify or supply evidence; or

(d) absent himself from any proceeding or investigation to which he has been legally summoned; or

(e) he bribes a person or accepts a bribe to do any of the acts listed above.

(12) One commits misconduct by tampering with evidence if he believes that an official proceeding or investigation has been undertaken or is about to begin and he:

(a) alters, destroys, conceals or removes any record, document, or thing with purpose to impair its truthfulness or availability in such proceeding or investigation; or

(b) makes, presents or uses any record, document, or thing knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation; or

(c) bribes a person or accepts a bribe to do any of the acts listed above.

(13) One commits misconduct by tampering with public records if he:

(a) knowingly makes a false entry in, or false alteration of, any record, document or thing received, kept, or published by the Nation or Tribal government for information or record, or required by law to be kept or published by others for information or record of the Nation or government; or

(b) makes, presents or uses any record, document, or thing knowing it to be false, and with the intent that it be taken as a genuine part of the information or records referred to in subparagraph (a) above; or

(c) purposely, and unlawfully destroys, conceals, removes or otherwise impairs the truth or availability of any such record, document or thing that is part of the information or records referred to in subparagraph (a) above; or

(d) bribes a person or accepts a bribe to do any of the acts listed above.

(I) "Public Money" means all cash, notes, grants, securities, accounts, receivables, bonds or evidence of indebtedness or their equivalent belonging to or received by the Nation or government for their own benefit or received or held by the Nation or government for any individual or group.

(J) "Tribal Court" means the Sac and Fox Nation District Court and the Supreme Court of the Sac and Fox Nation.

(K) "Tribal Prosecutor" means the Attorney General of the Sac and Fox Nation or, in the event of recusal or conflict, the General Counsel / Tribal Attorney.

(L) "Government" means the government of the Sac and Fox Nation.

CHAPTER ONE

GENERAL PROVISIONS

Section 101. Swearing In New Grievance Committee Members

Newly elected Members of the Committee shall be sworn into office at the same time as new Business Committee members are 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.

Section 102. Oath of Office

Prior to performing any duties as a Committee Member, each person designated to serve as a member of the Grievance Committee shall take the following oath of office:

I, (name), do solemnly swear or affirm that I will preserve, protect, and defend the Constitution and laws of the Sac and Fox Nation. That I will perform the duties of my office with all honesty, integrity, and sincerity. That I will not allow my personal feelings toward any person to determine my decision in any matter brought before the Grievance Committee. That I will act upon each Complaint brought before the Grievance Committee impartially with my only purpose being to determine the truth of each matter, to protect the innocent, and to expose the wrongdoers. These things I faithfully promise to myself, the other members of the Grievance Committee, and to each and every member of the Sac and Fox Nation. So help me God.

Section 103. Officers Of The Grievance Committee

The Committee shall select from its Members a Chairperson, Vice Chairperson, and a Secretary.

Section 104. Duties Of Grievance Committee Officers

(A) The Chairperson of the Committee shall moderate all meetings of the Committee and shall generally oversee the actions of the Committee.

(B) The Vice Chairperson shall assume the duties of the Chairperson in his absence or upon his refusal to act.

(C) The Secretary of the Committee shall keep the records of the Committee and the minutes of all proceedings. It shall be the duty of the Secretary of the Committee to send, within ten days of filing with the Committee, copies of all Complaints, Answers, motions, pleadings, orders, rules, transcripts of proceedings, judgments, and other official records or documents of the Grievance Committee to the office of the Secretary of the Nation for inclusion in the official Tribal records. The Secretary of the Committee shall stamp each document with the Committee's official seal to indicate the authenticity of each document sent to the Secretary of the Nation.

(D) It shall be the duty of each Member of the Grievance Committee to become personally familiar with all the provisions of this Act and Article VIII of the Sac and Fox Nation Constitution and to see that they are faithfully executed.

Section 105. General Powers Of The Grievance Committee

In addition to any specific authority delegated to the Grievance Committee by any other provision of law, the Grievance Committee, or its individual Members, shall have the following general powers when used to further the investigation of a Complaint filed by a Tribal member:

(A) The power by affirmative vote of at least two Members of the Committee to make any reasonable rules and regulations, not inconsistent with this Act, which are necessary or convenient for carrying out the purposes of this Act; provided that no rule or regulation made by the Committee shall be of any force or effect until and unless a stamped copy of the rule or regulation has been on file in the office of the Tribal Secretary for at least ten days.

(B) The power to administer oaths, to compel the attendance of witnesses or the production of documents or other evidence by issuing subpoenas, and to conduct hearings.

(C) The power to use Tribal police to serve subpoenas, and the power to hire special investigators, accountants, attorneys, or other professionals to assist in any function of the Grievance Committee; provided that any person who is party to a Complaint or who is related to a party may not serve in such a position.

(D) The power to have a seal which shall be circular in form and which shall have the words "Grievance Committee of The Sac and Fox Nation" inscribed upon it.

(E) The power to hire and fire its own employees or appointees, to purchase supplies and equipment at its own discretion, and to otherwise authorize the expenditure of funds appropriated to its use by the Governing Council; provided that the Committee may not spend any funds in excess of the amount appropriated, and the business office shall not issue checks for any amount which will cause a budget deficit in any line item; provided further, that the Grievance Committee shall present its proposed budget, as prepared by the Committee, for consideration at the annual Governing Council Meeting for each year.

Section 106. Records To Be Kept Permanently

(A) Every paper, pleading, motion, order, notice or other document filed with the Grievance Committee shall be kept in a permanent file as part of the record of a Complaint. One stamped copy of the entire record shall be kept in the Tribal Secretary's permanent file.

(B) Each and every hearing conducted by the Grievance Committee shall be recorded verbatim by court reporter, stenographer, tape recorder, video recorder, or similar method, which shall be kept as a permanent record. The record of each

hearing shall be duplicated and transcribed into typewritten form within ten business days after the hearing.

(C) The record of each Complaint proceeding shall be a permanent public record, and any Tribal member 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.

(D) Any Tribal member may obtain copies of the record of a Complaint proceeding, stamped as to authenticity, upon payment of such fees for reproduction as may be established by the Grievance Committee.

Section 107. Failure to Comply

Upon any party's failure to comply with the rules set forth by this Act or with any order of the Committee, the Committee may enter an appropriate order resolving the Complaint against the non-complying party, or may allow that party to cure his non-compliance as may be deemed fair and just by the Committee.

Section 108. Assigning Case Numbers

The Committee shall assign each Complaint made under this Act 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 number shall appear on each record, document, or thing regarding the case.

Section 109. Complaints To Be Made Separately

A Complaint filed under to this Act shall be against one Business Committee member only. Any Complaint submitted for filing naming more than one member of the Business Committee as Respondent shall be rejected by the Grievance Committee or dismissed upon motion of the Respondent.

Section 110. Joining Of Complaints

(A) Upon written request of any party, any Complaints filed against the same Business Committee member may be joined at any stage in order to save time and expense for the parties and the Nation.

(B) Upon written request of any party, any Complaints filed against two different Business Committee members may be joined at any stage in order to save time and expense for the parties and the Nation; provided that in order to be joined, the Complaints must address the same misconduct; and provided further that no unfairness would result to the Respondents from joining the Complaints.

(C) Whenever Complaints are joined for hearing, separate votes shall be taken as to each charge for each Respondent, and separate orders shall be entered for each Respondent showing the votes taken on each separate charge against that Respondent.

Section 111. Lack of Quorum Results in a Stay Of Further Removal Proceedings

At any time during which a quorum does not exist on the Business Committee due to the death, resignation, or removal of its members, all further removal proceedings shall be immediately stayed by the Grievance Committee in their current status pending appointment of new members to the Business Committee; provided that the Grievance Committee or any Tribal member may move the Tribal Court for a Writ of Mandamus to compel such appointments, and any immunity of the Business Committee and its members from suit by reason of being an agent of the sovereign Sac and Fox Nation is hereby waived for purposes of seeking such a Writ and its enforcement.

Section 112. Double Jeopardy Rules to Apply

(A) In a form modified to fit these circumstances, the doctrine of Double Jeopardy shall apply to all removal actions so that a Respondent shall not have to defend any transaction more than once.

(B) Jeopardy shall attach at the first word of testimony uttered by the first witness at the Hearing on the Merits before the Grievance Committee.

Section 113. Complaints To Be Brought In The Name Of The Nation

All Complaints shall be brought by the Complainant on behalf of the Sac and Fox Nation.

Section 114. Act To Remain Valid, Even If Parts Found Illegal

It is the intent of the Sac and Fox Nation that, even if any part of this Act is found to be unconstitutional or in violation of the Indian Civil Rights Act of 1978, the remaining parts of the Act shall be in full force and effect.

Section 115. Fees

Any fees required to be collected under this Act shall be delivered to the Accounting Office and will be deposited into the general fund of the Nation. Collection of the fees shall be entered into the record, the payer shall receive a receipt, and the Grievance Committee shall be issued a receipt from the Accounting Office upon deposit.

Section 116. Procedures Not Defined - Action Taken

In any instance where a procedure is not specifically set out in this Act or the Grievance Committee rules and regulations, the Grievance Committee may, upon notice to the parties and when fairness so requires, proceed in any lawful manner not inconsistent with this Act or its purposes.

CHAPTER TWO

PROCEDURE FOR HEARINGS BY THE GRIEVANCE COMMITTEE

Section 201. Types of Hearings Before the Grievance Committee

There are two basic types of hearings before the Grievance Committee, Hearings on a Motion to Dismiss and Hearings on the Merits.

Section 202. Beginning a Removal Action

A removal action is started by filing a written Complaint with the Grievance Committee and serving a copy on the Respondent as provided by this Act. The Grievance Committee shall have jurisdiction from such time as the Complaint has been properly filed, properly served upon the Respondent, and a return of service has been filed with the Grievance Committee.

Section 203. The Complaint

(A) **Contents.** A Complaint seeks the removal of a member of the Business Committee. It shall contain:

(1) a short, plain statement of the facts which the Complainant will rely upon to show that the Respondent has engaged in Misconduct in Office as defined by this Act.

(2) a demand that the Respondent be removed from office by the Governing Council.

(3) an affidavit under oath of the Complainant that he has read the Complaint, that he has personal knowledge of the facts alleged in the Complaint and that the facts alleged in the Complaint are true.

(4) the name and address of the Complainant and his attorney, if he is represented.

(B) **Evidence.** Any documents or other evidence that can verify the misconduct shall be attached to the Complaint.

Section 204. The Answer

Unless the Respondent wishes to file a Motion to Dismiss (described in Section 205) the Respondent shall file an Answer to a Complaint within 20 days from the date he is served with Summons and the Complaint. The Answer shall state in plain, concise terms the grounds upon which the Respondent bases his defense to the Complaint against him, and shall specifically admit or deny each claim and statement upon which the Complainant relies. If the Respondent is without information or knowledge regarding a statement or claim in the Complaint, he shall say so, and it shall be considered to be a denial.

Section 205. Motions to Dismiss.

(A) A Respondent may file a Motion to Dismiss before filing an Answer to a Complaint.

(B) The purpose of requiring a statement of the facts in the Complaint is to notify the Respondent of the exact misconduct being complained of so that he can prepare a defense to the charges. Accordingly, if the Complaint does not state facts but simply accuses the Respondent of misconduct, or if the Complaint states mere conclusions of wrongdoing without providing any plausible facts, evidence, or legal arguments that could lead a reasonable person to believe that the

Respondent engaged in misconduct, the Respondent may file a written Motion to Dismiss before filing an Answer. The Motion to Dismiss shall set forth the factual or legal reasons that the Complaint does not make plausible claims of misconduct against the Respondent.

(C) In addition to the reasons stated in subsection (B), a Respondent may file a written Motion to Dismiss based on the failure of the Complainant to pursue the action or the failure of the Complainant to comply with an order of the Committee.

(D) The Complaint may be dismissed by the Grievance Committee itself for the reasons stated in subsections (B) or (C), even if no Motion to Dismiss is filed by the Respondent.

(E) A Complainant shall have 20 days from the date he receives service of the Motion to Dismiss to file a written response with the Grievance Committee.

(F) The Committee shall schedule a hearing on the Motion to Dismiss and notify the parties of the time and place for the hearing. The Respondent has the burden of showing that his motion is justified under the facts or law. Therefore, at the motion hearing, the Respondent will be allowed to present his motion first, then the Complainant may respond, and the Respondent may then rebut. The Committee may question the parties about their positions and must then reach a decision.

(G) If the Grievance Committee grants a Motion to Dismiss, it shall be considered a judgment on the merits of the Complaint.

(H) If the Grievance Committee denies the Respondent's Motion to Dismiss, the Respondent must file an Answer to the Complaint within 10 days after the Grievance Committee serves notice of its decision.

(I) For the same reasons set forth in subsection (B), no act of misconduct which is not alleged in the Complaint may be presented to or relied upon by the Grievance Committee or the Governing Council in determining the action.

Section 206. Form of Documents Filed With Grievance Committee

(A) **Heading.** Every document filed with the Grievance Committee shall contain the heading that appears in the Appendix of Forms at Form 1.

(B) **Paragraphs.** All statements of a Complaint or an Answer shall be set forth in separate, numbered paragraphs.

(C) **Documents to be Typed.** If possible, any documents filed with the Grievance Committee should be typed and double-spaced on 8.5 x 11-inch, white paper.

Section 207. Filing the Complaint

(A) The Complaint shall be filed by delivering an original and seven copies to any Member of the Grievance Committee.

(B) Prior to accepting a Complaint for filing, the Grievance Committee Member shall require a filing fee to be paid in the amount of One Hundred Dollars ($100.00). This filing fee shall be paid by money order made payable to: "The Sac and Fox Nation." It shall be delivered immediately to the Accounting Office and deposited into the general fund of the Nation.

(C) Upon presentation of the Complaint and payment of the filing fee, the Grievance Committee Member shall immediately stamp each copy of the Complaint with a mark indicating the filing, shall note the exact time and date of filing and the fact that the filing fee has been paid, and shall sign his name. *See* Appendix of Forms at Form 2.

(D) The Grievance Committee Member receiving the Complaint shall return one copy of the Complaint to the Complainant, deliver one copy to the Tribal Secretary 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 delivered to the Chairperson of the Grievance Committee for service upon the Respondent.

(E) The Chairperson or any other Member of the Grievance Committee shall prepare and issue a Summons and have the Summons and the Complaint served upon the Respondent.

Section 208. Form of Summons

A Summons is a written notice that advises the Respondent that he is required to respond to the Complaint within (20) twenty days or else the Complaint will be referred to the Governing Council for action. The Summons shall be in substantially the form shown in the Appendix of Forms at Form 3.

Section 209. Service of Process

Service of process shall consist of delivering to the Respondent a copy of the Complaint along with a Summons.

(A) The return of service on the Summons shall be signed by the person serving the Complaint and Summons, and he or she shall note the date, time, and place of

service. *See* Appendix of Forms at Form 3. The return of service shall be detached from the Summons and filed with the Grievance Committee.

(B) Service may be made on a party by delivering the required papers to the party himself or to some person of suitable discretion over 18 years old at the party's home or principal place of business.

(C) Service may be made by any law enforcement officer or any Member of the Grievance Committee.

(E) Service may be made by certified mail deliverable to addressee only, return receipt requested, showing the place, date, and person receiving the mail. Certified mail service shall be complete upon return of the postal receipt with the recipient's name signed on it.

(F) Service upon a Respondent or a Complainant may be made anywhere in the United States, including the lands of any Indian Nation.

(G) If a Respondent or Complainant personally refuses to accept service, service shall be considered performed if the Respondent or Complainant is informed of the purpose of the service and is offered copies of the papers served.

(H) All papers filed with the Grievance Committee or issued by the Grievance Committee shall be served under this rule or, except for the Summons and Complaint, may be served on or mailed to the attorney of a party.

Section 210. How To File Documents With The Committee

(A) Any Answer, Motion to Dismiss, return of service, other motion, brief, or other document required to be filed may be filed with the Grievance Committee either by personally delivering it to any Grievance Committee Member or by mailing it to any Grievance Committee Member by certified mail, return receipt requested, on or before the due date.

(B) An original and seven copies of all documents shall be filed.

(C) The Committee Member receiving the document for filing shall immediately stamp each copy of the document with a mark indicating the filing, shall note the exact time and date of filing, and shall sign his name. *See* Appendix of Forms at Form 2.[2]

[2] When Form 2 is utilized for the filing of documents other than the Complaint, the Committee Member may mark through the portion of Form 2 that reads "with the filing fee duly paid and received by me."

(D) The original and copies of the filed document shall be distributed as provided in Section 207(D) of this Act.

Section 211. Timing

(A) **Business Days.** For any period of time set forth in this Act, only business days (Monday, Tuesday, Wednesday, Thursday, and Friday) shall be counted. Legal holidays shall not be counted.

(B) **Additional Time.** For good cause shown and upon written request of any party, the Committee may grant additional time to do any act.

(C) **Notice Of Hearings.** Notice of hearings shall be served no later than 10 days prior to the scheduled hearing.

Section 212. Amendment Of Pleadings

A party may amend his Complaint or Answer once before the opposing party has responded or, if no response is required, not less than 20 days before the case is scheduled for a Hearing on the Merits. The opposing party may respond to the amended pleading, if appropriate, and the hearing date may be delayed if necessary. Other amendments shall be allowed only upon written request of a party and order of the Committee.

Section 213. Motions Generally

(A) A motion is a request that the Grievance Committee take a particular action or enter a particular order affecting the outcome or the procedure in the removal proceedings.

(B) All motions except those which arise during a hearing shall be in writing and shall comply with the requirements of Sections 206(A) and 206(C) of this Act. Motions shall be filed and served on the opposing party as provided by this Act.

(C) The Grievance Committee is only required to hold hearings on Motions to Dismiss and Hearings on the Merits. However, the Grievance Committee may, in its discretion, grant hearings on other matters, if requested by a party. When such a hearing is granted, the Committee shall schedule a hearing on the motion and notify the parties of the time and place for the hearing. The party making the motion has the burden of showing that his request is lawful and just. Therefore, at the motion hearing, the moving party will be allowed to present his motion, the other party may then respond, and the moving party may then rebut. The

Committee may question the parties about their positions and must then reach a decision.

(D) The decisions of the Committee on any motions made by the parties should be written out and placed in the case file, with copies provided to the parties.

Section 214. Exchange of Information

(A) **Formal Questions.** A party may submit written questions to any other party, who shall answer them in writing, under oath, within 25 days of receiving them.

(B) **Depositions.** Oral depositions may be taken of a party or a witness only upon the agreement of the parties or upon order of the Committee when other methods of exchanging information would be inadequate.

(C) **Production, Entry, or Inspection.** A party may make a written request to another party to produce any documents or things in his custody or possession for inspection or copying. A party may also request permission to enter and inspect property reasonably related to the Complaint. The opposing party shall reply within 25 days as to whether or not such production, entry, or inspection will be allowed and if not, why not.

(D) **Scope of Information.** Parties may obtain information regarding any subject which is relevant to the removal action. However, parties may not obtain information covered by the attorney-client privilege or the attorney work product privilege.

(E) **Protective Order.** A party from whom information has been requested may ask the Committee for a protective order which will permit the party to refuse to produce information or to produce information only under certain conditions. The only grounds for granting such an order are that the information sought is irrelevant or privileged or that producing it would subject the party to undue annoyance, harassment, embarrassment, oppression, or undue burden or expense.

(F) **Failure To Provide Information.** If a party fails to provide information as set forth in this rule, the opposing party may move for an order to compel the non-complying party to perform. If the Committee grants the motion, the Committee may award costs of the motion, to the moving party. If a party fails to perform after being ordered to do so by the Committee, the Committee may, in an aggravated case and upon motion, order that a certain fact, claims, or defense be considered established or may strike part of a claim or defense, or may dismiss the Complaint or render a judgment against the non-complying party.

Section 215. Voluntary Dismissal Of Actions

(A) If filed before the Respondent files an Answer or Motion to Dismiss in response to the Complaint, the Complainant may file a notice of dismissal, and he may subsequently re-file his Complaint at a later date if he wishes. In all other circumstances, a Complainant shall file a motion with the Committee asking for it to dismiss his Complaint, and the Committee shall do so and shall state whether or not the Complainant may re-file his Complaint at a later date.

(D) The Committee may, in its discretion, order a Complainant moving to dismiss his own Complaint to pay the costs, including attorneys fees, of the Respondent if the proceeding has progressed beyond the filing of a Motion to Dismiss or Answer, and may order payment of costs in other circumstances where such is considered appropriate.

Section 216. Witnesses and Evidence

(A) At all hearings the testimony of witnesses shall be taken orally under oath, unless otherwise provided in this Act.

(B) The Grievance Committee shall have the discretion to allow or disallow the introduction of any type of evidence based upon the Committee's determination of whether the evidence is sufficiently relevant and reliable.

Section 217. Subpoenas

(A) **Issuance.** Subpoenas requiring attendance of witnesses or production of documents or things shall be issued by any Member of the Grievance Committee on the motion of a party. This motion may be granted without notice to the opposing party. A motion to subpoena witnesses may not be denied, provided that the party requesting the subpoena may be charged a reasonable fee for service of the subpoenas issued, not to exceed the actual costs of such service. These pre-paid service fees shall be taxed as costs of the action.

(B) **Service.** Subpoenas may be served in any manner in which a Complaint and Summons may be served.

(C) A party served with a subpoena to produce documents or things shall have 5 days from the time he is served to produce the requested items to any member of the Grievance Committee.

(D) **Failure to Appear or Produce.** A person who has been properly served with a subpoena and fails to appear or to produce documents or things without lawful cause may be deemed in contempt of the Grievance Committee, and the

Committee is authorized to impose a civil penalty of not less than Fifty Dollars ($50) nor more than Two Hundred Fifty Dollars ($250) for such contempt. Upon notice from the Committee, it shall be the duty of the Tribal Prosecutor to bring an action in the Tribal Court or other appropriate jurisdiction for the collection of such penalty and for execution upon the property of such person, if necessary.

(E) **Subpoena Unnecessary.** A person present at any hearing on a removal action may be required to testify in the same manner as if he were in attendance upon a subpoena.

(F) All subpoenas shall be issued in substantially the form shown in the Appendix of Forms at Form 5.

Section 218. Witness Fees

Witnesses attending a hearing pursuant to a subpoena shall be entitled to mileage expenses. Such fees shall be taxed as costs of the action.

Section 219. Setting Date For Hearing On The Merits

(A) Upon the motion of either party or on its own, the Grievance Committee shall set a time and date for a Hearing on the Merits of a Complaint. The Hearing may be set at any time after the Answer is filed. The date for the Hearing on the Merits should be set at a time such that the exchange of information and the hearing on the Motion to Dismiss can be completed prior to the Hearing on the Merits, but soon enough that the merits of the Complaint can be heard with all reasonable speed.

(B) The Committee may postpone the Hearing on the Merits from time to time upon notice for good cause shown or at the convenience of the Grievance Committee.

(C) All parties shall be notified in writing of the time, date, and place of the hearing by the Grievance Committee. Copies of the notice shall be placed in the permanent file of the Committee and the Tribal Secretary.

(D) All hearings of the Grievance Committee shall be held either at the Sac and Fox Tribal Offices or the Sac and Fox Community Hall, located south of Stroud, Oklahoma, or the Sac and Fox Multi-Purpose Building in Shawnee, Oklahoma, or other designated building within the Sac and Fox Nation reservation.

Section 220. Role Of The Grievance Committee In Hearings

The role of the Grievance Committee in all hearings of the Committee shall be that of finders of fact and interpreters of the law. As such they should hear the evidence submitted by the parties, and decide from the evidence submitted to them all questions of law and fact presented. 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. A Member of the Committee should not discuss the case with any party, unless the other party is also there to participate in the discussion.

Section 221. Quorum

The Grievance Committee may conduct a Hearing on the Merits of a Complaint only if at least two Members 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. A record shall be made of Committee Members present and absent.

Section 222. 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 Chairperson of the Grievance Committee.

(B) The Complainant may then present an opening statement, which is an opportunity to present a statement of what the party expects to prove by his evidence so that the Committee will know what to expect and what that party thinks is important to his case. The Respondent may then either make his opening statement or may reserve it to be made immediately prior to the presentation of evidence on behalf of the Respondent.

(C) The Complainant shall then call his witnesses and offer his evidence in support of the Complaint.

(D) The Respondent may then call his witnesses and offer his evidence in support of his defense. At the end of the Respondent's presentation of his evidence, the Complainant and Respondent may then respectively offer rebuttal testimony only, unless the Committee for good cause shown permits them to offer additional new evidence.

(E) When all the evidence has been presented, the Complainant, and then the Respondent, may each make a closing argument, which is an opportunity to

summarize the evidence presented which each party thinks in his favor, to show how that evidence is believable and reliable, and to show how that evidence supports his theory of the case. It is also his opportunity to state why the evidence presented by the other party is not believable or reliable or is insufficient to support the claim or defense of the other party.

(F) After the closing arguments are made, the Committee shall recess the hearing and retire to a private place to consider their decision. Any ruling which would result in calling a Governing Council meeting to consider the removal of the Respondent shall require a unanimous vote of the Committee Members present. Upon making a decision, they shall call the hearing to order and announce their decision to the parties and the public subject to the provisions of Section 227 of this Act.

Section 223. Taking Testimony Of A Witness

(A) The procedure to follow in taking testimony of a witness shall be:

(1) **Direct examination.** The party calling the witness may question the witness about any matter relevant to the issues presented in the Complaint or the defenses asserted in the Answer.

(2) **Cross examination.** The opposing party may then question the witness about any testimony given on direct examination and, further, may question him about any other matter relevant to the issues presented in the Complaint or the defenses asserted in the Answer or relevant to the witness's honesty, reliability, or ability to perceive, remember, or relate the facts.

(3) **Re-direct examination.** The party calling the witness may then re-question the witness on any issue raised in the cross-examination.

(4) **Re-cross examination.** The opposing party may then question the witness on any issue raised in the re-direct examination.

(5) **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.

(B) **Examination and Cross Examination.**

(1) A party may use leading questions against an opposing party or hostile witness or whenever such questions appear reasonably necessary to extract testimony from witnesses who are children or who have poor ability to communicate.

(2) 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 by calling into question the witness's honesty, reliability, or ability to perceive, remember, or relate the facts.

Section 224. Rulings On Motions - Briefs

(A) The Committee may order the parties to file briefs explaining the law and authority in support of their position on any motion whenever such briefs would be of assistance to the Committee.

(B) Rulings on motions concerning procedural issues only which do not affect substantial rights of the parties may be made by any Member of the Committee.

(C) Rulings on any motions concerning substantial rights of the parties or made during any hearing shall be made by affirmative vote of a majority of the Committee.

(D) Any rulings which would result in calling a Governing Council meeting to consider the removal of the Respondent shall require a unanimous vote of the Committee Members present.

(E) All votes on motions shall be recorded and be part of the record.

Section 225. Burden Of Proof

The burden of establishing proof of misconduct in office shall be on the Complainant. Every Respondent shall be considered innocent until the evidence introduced at the hearing establishes otherwise.

Section 226. Standard Of Proof

In order for there to be a proper showing that misconduct in office has occurred, each and every Member of the Committee must be convinced that clear and convincing evidence has been introduced at the hearing which establishes that each element of misconduct as defined by this Act has occurred and that the Respondent is responsible for the misconduct.

Section 227. Findings And Order To Be In Writing

(A) Upon reaching a decision as required by Section 222(F) of this Act and before announcing that decision to the parties or the public, the Grievance Committee shall state in writing the facts that they have found to be proved by clear and convincing evidence, the conclusions they have reached from those facts, and whether or not those facts, as a matter of law, prove each element of misconduct in office.

(B) If all the Members of the Grievance Committee present do not agree that misconduct in office has been clearly and convincingly established by the evidence presented, then a proper showing of misconduct in office has not been made, and the Committee shall order the Complaint to be dismissed.

(C) If all the Members of the Grievance Committee present do agree that misconduct in office has been clearly and convincingly established by the evidence presented, then a proper showing of misconduct in office has been made, and the Grievance Committee shall order the Respondent to submit to a hearing before the Governing Council.

(D) The Respondent may be ordered to submit to a hearing on one or more counts in the Complaint and not upon others, if such counts have been dismissed by the Committee.

(E) 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 228. Costs And Attorney Fees

(A) As a general rule, each Complainant and Respondent shall be responsible for his own attorneys fees and costs incurred in bringing or defending a Complaint.

(B) However, if the Committee determines that a Complainant's Complaint is unfounded and frivolous, malicious, or brought purely for harassment, political reasons, or other unlawful purposes, the Committee may, in its sole discretion, order the Complainant to pay the attorneys fees and costs of the Respondent and/or the attorneys fees and costs of the Grievance Committee.

(C) If the Governing Council ultimately determines that the Respondent was guilty of the misconduct stated in the Complaint, the Grievance Committee may, it its sole discretion, order the Respondent to pay the attorneys fees and costs of the Complainant and/or the attorneys fees and costs of the Grievance Committee.

(D) Any order of the Committee awarding costs or attorneys fees shall be considered as a judgment by the Tribal Court or any court of appropriate jurisdiction, and the

court may use any civil process available under the law including, but not limited to, garnishment and execution to secure payment from the party ordered to pay.

Section 229. Result Of Lying

If the Committee has reason to believe that the Complainant lied in making the Complaint, or that any party or witness has otherwise lied under oath, or that any violation of the law has occurred, they shall notify the Tribal Prosecutor and the Tribal police of their belief and the facts which support that belief, and appropriate action may be taken.

Section 230. Private Cause Of Action Created

In addition to any common law actions available, any Business Committee member who is the subject of a Complaint shall have a cause of action in the Tribal Court for all his actual damages, including damage to his reputation, against the person making the Complaint upon showing that (1) the Complaint was filed, (2) the Complaint was dismissed without Governing Council action, and (3) the Complainant 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.

CHAPTER THREE

PROCEDURE FOR CALLING HEARING OF THE GOVERNING COUNCIL

Section 301. Calling The Governing Council Meeting

(A) Upon entering its findings and order requiring the Respondent to submit to a hearing before the Governing Council pursuant to Section 227 of this Act, the Grievance Committee shall enter an order calling a meeting of the Governing Council on a specified time and date, to be held not less than ten days after the date of the order, at the Sac and Fox Community Building on the Sac and Fox Reservation located south of Stroud, Oklahoma.

(B) Each Member of the Grievance Committee who participated in the Hearing on the Merits shall sign the order calling the Governing Council Meeting.

Section 302. Notice Of Governing Council Meeting

Notice of the Governing Council Meeting shall be published once each week for two consecutive weeks in a newspaper of general circulation in the Stroud, Oklahoma, Cushing, Oklahoma, and Shawnee, Oklahoma areas, beginning the week following the date of entering the order for Governing Council Meeting. In addition, the notice shall be posted on each entry door to the Sac and Fox Tribal Complex so that it is clearly readable when entering or leaving the building, and, insofar as possible, on the bulletin boards at the Shawnee Multi-Purpose Building, the Sac and Fox Housing Authority Office, and the Central Nations of the Shawnee Area, Inc., offices, beginning from the date of entering the order for Governing Council Meeting. Such notices must remain posted until after the Governing Council Meeting has taken place. The notice may be posted or distributed by additional methods in the discretion of the Grievance Committee. Expenses incurred in publishing notice shall be taxed as costs.

Section 303. Form Of Notice

The notice of the Governing Council Meeting shall be in substantially the form shown in the Appendix of Forms at Form 6.

CHAPTER FOUR

GOVERNING COUNCIL REMOVAL HEARING

Section 401. Council Members to Sign in

(A) All members of the Governing Council shall, upon entering the Governing Council Meeting, sign a roll of Council Members kept by a person appointed by the Grievance Committee for that purpose and shall receive a badge which shall be worn during the Governing Council Meeting.

(B) Any member of the Governing Council who does not sign in or does not have a badge showing shall not be counted as present for purposes of counting a quorum, shall not have any right to speak before the Council, and shall not have the right to vote upon the removal of the Respondent.

Section 402. Hearing Open to all Persons

The meeting of the Governing Council to hear a Complaint of misconduct in office shall be an open meeting, and no person may be excluded therefrom except for

disruption of the Council proceedings and upon order by the Grievance Committee; provided that no still or motion picture cameras or recording equipment other than the official recorder shall be allowed in the Council Chambers.

Section 403. Quorum Count

(A) At the time designated in the notice of the Governing Council removal hearing, or as soon thereafter as possible, the Chairperson of the Grievance Committee shall call the Governing Council to order and determine whether a quorum is present. A quorum shall consist of 40 Governing Council members.

(B) If a quorum is present, the Grievance Committee shall proceed with the hearing.

(C) If a quorum is not present, the Grievance Committee may delay the proceedings not more than two (2) hours. If a quorum does not appear within the two-hour period, the Grievance Committee shall order the Governing Council adjourned and the hearing rescheduled for a date within 20 days. Notice of the rescheduled hearing shall be made as described in Sections 302 and 303 of the Act.

(D) Once a quorum is established, it shall be deemed established for all purposes until the meeting is adjourned.

(E) Once a council member has signed in, he shall be considered present for all purposes until the Council meeting is adjourned.

Section 404. Relationship of Grievance Committee and Governing Council

(A) The Grievance Committee shall serve in the same function as a judge during the Governing Council hearing and, as such, shall rule on all motions and points of law which arise during the hearing. The Members of the Grievance Committee shall not vote as to whether the Respondent is to be removed from office.

(B) The Governing Council shall serve as a jury and, as such, shall determine from the evidence presented to them whether the Respondent is to be removed from office.

Section 405. Swearing In The Governing Council

Upon determining that a quorum is present, the Grievance Committee Chairperson shall ask the members of the Governing Council to rise and take the following oath:

I, (NAME), as a member of the Governing Council, solemnly swear or affirm that I will listen to the evidence presented, that I will cast my vote in this matter according to my own conscience and not from any personal feelings about these parties, and will honestly and truthfully decide the matter presented today, So Help Me God.

After thanking the Governing Council and asking them to be seated, the Grievance Committee Chairperson shall order the hearing to begin.

Section 406. Order and Manner of Hearing

(A) The order and manner of hearing shall, as nearly as may be, follow the order and rules for the Hearing on the Merits before the Grievance Committee; provided that no continuance may be granted except upon a showing of extremely unusual, unexpected, and unavoidable circumstances which would prevent a fair determination of the issues and which occurred through no fault of the party requesting the continuance. The party requesting the continuance shall pay all costs incurred in calling the Governing Council into session.

(B) Before the opening statement, and again after closing argument, the Grievance Committee shall read to the Council the definition of the misconduct the Respondent is accused of committing.

Section 407. Dismissal Upon Complainant's Misconduct

If, during the course of the hearing, the Complainant or Complainant's witnesses make reference to or present evidence of any matters not alleged in the Complaint or which were dismissed by the Grievance Committee at the Hearing on the Merits, and these matters may harm the ability of the Respondent to get a fair hearing; or if the Complainant otherwise takes or attempts to take any unfair or undue advantage which may harm Respondent's opportunity to get a fair hearing, the Grievance Committee may dismiss the Complaint and adjourn the Council on motion of the Respondent.

Section 408. Discussion of the Council

After the presentation by the parties of their closing arguments, the Grievance Committee shall preside over the discussion of the Council, provided that the Committee shall not speak for or against any party but shall maintain order and decorum. Any Council member except the parties and the Members of the Grievance Committee may address the Council on any matter relevant to the issues, provided that the Grievance Committee may impose reasonable and equal time limitations on such addresses or upon the discussion.

Section 409. Voting By The Council

The vote taken on the issue of removal of the Respondent shall be by secret ballot. The Grievance Committee shall see that each Council Member who signed in to the hearing is given one ballot. The ballots shall be marked by the Council members and collected by the Grievance Committee.

Section 410. Form of Ballots

The ballots shall be in substantially the form shown in the Appendix of Forms at Form 7. The completed ballots shall be retained as part of the permanent record in the case.

Section 411. Counting the Ballots - Judgment

The Grievance Committee shall immediately proceed to publicly count the returned ballots.

(A) If one-half or less of those Council members present vote "Yes," then the Complaint is dismissed and the Respondent will remain in office, and the Grievance Committee shall enter such findings in the record.

(B) If more than one-half of those Council members present vote "Yes," then the Grievance Committee shall announce that the Complaint has been proven and that the Respondent is removed and is no longer an officer of the Nation or member of the Business Committee, and the Grievance Committee shall enter such findings in the record. The Bureau of Indian Affairs and any other interested person shall be notified of the removal of the Respondent from office.

(C) A Respondent who is found guilty of misconduct in office by the Governing Council shall immediately turn in all keys belonging to the Nation and will be escorted away from the hearing. Any of the Respondent's personal possessions remaining in an office or building of the Nation will be packed and delivered to Respondent's home.

Section 412. Adjournment

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