

Title 1 – Tribal Code

1-1 General Provisions

1-1-1 Authority and Construction

1-1-1.1 Purpose

This Code of laws is adopted under the Constitutional and inherent authority of the Three Affiliated Tribes. The intent of the Fort Berthold Tribal Code is to protect all persons and resources and to achieve self-sufficiency.

1-1-1.2 Construction

The following principles of construction will apply to all the laws unless a different construction is obviously intended or explained.

- a. Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.
- b. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
- c. Whenever a term is defined in a specific chapter that definition shall apply to all sections under that chapter unless a contrary meaning is clearly intended.
- d. This Code shall be construed, as a whole, in a logical and consistent manner.
- e. If any law or provision of this Code is held invalid, it shall be severable from the remainder of the Code.
- f. Any typographical errors or omissions shall be ignored when the intended meaning of the provision containing the error is otherwise reasonably certain.
- g. The term “Tribe” herein shall refer to the Three Affiliated Tribes of the Fort Berthold Indian Reservation also known as the Mandan Hidatsa Arikara (MHA) Nation.
- h. The term “Reservation” herein shall refer to the Fort Berthold Indian Reservation.
- i. The term “District Court” herein shall refer to the Fort Berthold District Court.
- j. The term “Council” herein shall refer to the Tribal Business Council of the Tribe, unless another usage or meaning is stated.

1-1-1.3 Applicable Law

The laws will be applied in the following priority:

- a. The Constitution and bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation, Three Affiliated Tribes Tribal Code, and substantive or procedural Resolutions affecting the Code;
- b. The customs, usage and jurisprudence of the Tribe;
- c. Treaty of Fort Laramie of 1851;
- d. Applicable federal laws;
- e. Other tribal law and jurisprudence;
- f. North Dakota law and jurisprudence;
- g. Provided that federal, other tribal, or North Dakota laws and jurisprudence shall not be construed to have any greater authority than the laws, customs or jurisprudence of the Tribe.

- 1-1-1.4 Sovereign Immunity
Nothing contained in the Code shall be construed as a waiver of sovereign immunity from suit of the Tribe, its officers, businesses, or entities unless expressly waived. A waiver of immunity will not be implied and must be specifically stated as to its terms and conditions.
- 1-1-2 **Establishment of the Courts**
- 1-1-2.1 Establishment
Pursuant to Article VI, Section 3 of the Constitution and Bylaws of the Three Affiliated Tribes, the Three Affiliated Tribes Tribal courts are created and granted such judicial power and authority as may be necessary to realize the jurisdiction granted through Article I of the Constitution.
- 1-1-2.2 Powers
The judicial power of the people shall be vested in the Fort Berthold Judiciary and extend to all cases and controversies in law, equity, and custom. The Tribal courts, acting through their officers, shall have the power to issue all process, orders, and judgments which may be necessary for the due execution of powers vested in the courts.
- 1-1-2.3 District Court
The District Court shall be a court of general jurisdiction over all civil and criminal matters, juvenile matters, and appeals from administrative bodies as provided by law.
- 1-1-2.4 Juvenile Court - [Reserved]
- 1-1-2.5 Court of Appeals
The Court of Appeals shall be known as the MHA Nation Supreme Court and shall exercise jurisdiction to review orders and decide appeals from final judgments or other orders of the District Court and as otherwise provided by law.
- 1-1-3 **Jurisdiction of the Courts**
- 1-1-3.1 Policy
It is the intent of this Code that the jurisdictional powers shall be liberally construed to serve the ends of justice, and a lack of legislation in an area shall not be deemed a waiver of that authority. It is judicial policy that available Tribal administrative and court remedies be utilized to address any issues or defenses raised.
- 1-1-3.2 Territorial
The jurisdiction of the courts shall extend to any and all lands, water, and aerial space within the boundaries of the Fort Berthold Indian Reservation, including all easements, fee patented land, rights-of-way, and over lands outside the Reservation boundaries held in trust for Tribal members or the Tribe, unless restricted under federal law.
- 1-1-3.3 Personal
The court shall have civil and criminal jurisdiction over all persons who reside, enter or transact business within the territorial boundaries of the Reservation; provided that criminal jurisdiction over non-members shall extend as permitted by federal law. For purposes of jurisdiction “persons” shall include individuals, business, partnerships, associations, cooperatives, corporations, and any other legal commercial entity.

1-1-3.4 Property

The court shall have territorial jurisdiction over all property, real and personal located within the boundaries of the Fort Berthold Indian Reservation and over lands of interests outside the exterior boundaries. Such jurisdiction shall extend to ownership or rights in property, and the application of property, and the application of property to the satisfaction of a judgment for which the owner is liable. The court has the authority to conduct in rem proceedings concerning property located within the Reservation boundaries.

1-1-4 **Composition**

1-1-4.1 Chief Judge of the District Court

The Chief Judge of the District Court must have a Juris Doctorate from an ABA-accredited law school and be a licensed attorney in good standing with a tribal or state bar board with experience in tribal law and federal Indian law. The Chief Judge shall be appointed for a two-year period by the Tribal Business Council, or as set by contract. The Chief Judge shall have authority to hear civil, criminal and other matters and issue orders over matters in which the Chief Judge presides. The Chief Judge shall have supervisory authority in the administration of the District Court, including and not limited to assignment of judges for matters, supervision of the administrative staff, and any and all related administrative processes for the efficiency and effectiveness of the District Court.

1-1-4.2 Associate Judge

The Tribal Business Council at its first regularly scheduled meeting commencing in January, 1998, and each year thereafter may appoint four (4) attorneys to serve in the capacity associate judge. An associate judge must have a Juris Doctorate from an ABA-accredited law school and be a licensed attorney in good standing with a tribal or state bar board with experience in tribal law and federal Indian law. The associate judge may be appointed by the Tribal Business Council for a term of two (2) years. The associate judge has the authority to conduct hearings, issue orders over matters in which the associate judge presides, and sign necessary documents in all cases that are assigned by the Chief Judge.

1-1-4.3 Magistrate

A magistrate shall be an enrolled member of the Three Affiliated Tribes or a federally recognized tribe. The magistrate shall have the authority to conduct criminal arraignments, handle small claims matters, juvenile matters, and other matters assigned by the Chief Judge or as set by Tribal law. The magistrate shall be supervised by the Chief Judge.

1-1-4.4 Right to a Law Trained Judge

In any contested proceeding before the Fort Berthold District Court, a party litigant in the matter shall have the right to have the matter heard by a judge who must have a Juris Doctorate from an ABA-accredited law school and be a licensed attorney in good standing with a tribal or state bar board with experience in tribal law and federal Indian law. In order to exercise this right, a party litigant must file a demand with the clerk of court within the time frame set forth in Title 1, Chapter 2, Section 2 of the Fort Berthold Tribal Code.

1-1-4.5 Appeals Judges

All appeals shall be heard before the MHA Nation Supreme Court pursuant to the rules as set forth in Title 1, Chapter 5.

1-1-4.6 Suspension or Removal of Judge or Magistrate

1-1-4.7 A judge or magistrate may be suspended or removed from all duties and responsibilities for cause upon written notice of violation(s) of the Rules of Judicial Conduct filed with the Chairperson of the MHA Judicial Committee. Upon receipt of the written notice of violation(s), a hearing may be requested. Upon request for a hearing, the Tribal Business Council shall appoint an attorney hearing officer and a hearing shall be held within thirty (30) days. The appointed attorney hearing officer shall provide written findings and recommendations to all parties following the hearing. Any decisions by the appointed attorney hearing officer shall be appealable to the MHA Supreme Court within thirty (30) days upon the receipt of the written findings. The Tribal Business Council may suspend or remove the judge or magistrate pending the outcome of the hearing and/or appeal.

If the violations alleged are against the Chief Judge of the District Court, the Judicial Committee shall appoint an associate judge to fulfill in the interim the judicial duties of the Chief Judge of the District Court upon his/her suspension or removal, pending the outcome of any hearing and/or appeal to the MHA Supreme Court. The clerk of the MHA Supreme Court shall place an appeal pursuant to this section on an expedited calendar.

1-1-4.8 Clerk of Court

A clerk shall be responsible for all filing, docketing, correspondence, jury selection, and scheduling. Other duties may be required or as assigned by the Tribal judges and/or Tribal Court Administrator.

1-2 Administration

1-2-1 Jury Selection

1-2-1.1 Six Person Jury

A jury shall consist of six (6) persons for civil and criminal cases.

1-2-1.2 Jury Selection

1-2-1.3 A clerk of court is authorized to direct and manage the jury selection process.

1-2-1.4 Source of Names

The source of names is the most recent enrollment list of resident Tribal members and others who are residents within the exterior boundaries of the Fort Berthold Indian Reservation. A person not on the initial source list may have his or her name included on a source list by filing such request with the clerk so long as he or she is a resident within the exterior boundaries of the Reservation. The clerk shall review the source names and remove those who have moved, are deceased, or are otherwise not eligible to serve as jurors.

1-2-1.5 Time for Selection of Jury Pool

The names of prospective jurors from the source list shall be drawn to make up the jury pool for jury selection.

1-2-1.6 Methods of Jury Pool

Jury pool shall be compiled by using either of the following methods:

- a. Placing names in a box and drawing by random until the desired number of names are selected; or
- b. Assigning numbers 1-10 in sequence on lists, then picking one number from a group of

- 10 (for example, picking the number 4 from each group of 10); or
- c. Using a jury wheel and selecting the names on a rotated basis; or
- d. Using an electronic selection method the court finds to be satisfactory.

In any event, the clerk shall certify which method was used after the jury pool is complete. The certification will be kept with the court records.

1-2-1.7 Jury List

From the jury pool, a random drawing will be held to determine the jury list for a civil or criminal trial. The names of the jury list shall receive a summons for jury selection. From the jury list, the jury panel will be selected.

1-2-1.8 Information Sheets and Hardship

An information sheet shall be filled out by prospective jurors who are summoned for jury duty. The information sheet will permit a prospective juror to request hardship exemption. Upon approval by the Judge, a prospective juror may be exempted due to a hardship if the prospective juror:

- a. Is a person over age 70;
- b. Is a person who is in active duty military;
- c. Is a person who is attending, in person, college or school outside the exterior boundaries of the Fort Berthold Indian Reservation;
- d. Is a person under a guardianship or has a mental or physical impairment; or
- e. Has another good-cause personal or work-related reason.

A person shall not be disciplined based upon a valid hardship exemption.

1-2-1.9 Persons Not Eligible

The following are not eligible to serve as jurors:

- a. a non resident;
- b. a non-legal resident of the United States;
- c. a minor;
- d. a felon;
- e. a person not able to read and write;
- f. a person with a serious mental impairment affecting cognitive abilities; or
- g. a person with a pending criminal charge in tribal, federal, or state court.

1-2-1.10 Criminal Trials

The six person verdict must be unanimous.

1-2-1.11 Civil Trials

In a six person jury the verdict may be rendered by at least five persons who agree on a verdict.

1-2-1.12 Jury Bonds

For all civil jury trials, a bond must be posted by the party requesting the jury trial in the amount provided in the then current Tribal Court fee schedule.

- 1-2-1.13 Juror Fees
- 1-2-1.14 The juror who serves shall be entitled to juror fees and mileage at a rate similar to other courts, or as set by the Chief Judge of the District Court. The court may assess jury costs in a civil jury trial against a party in the discretion of the presiding judge.
- 1-2-2 Demand for Change of Judge
- 1-2-2.1 Recusal by Judge
Any presiding judge who discovers during the course of the proceedings that he/she has a conflict of interest or lack of impartiality, or appearance thereof, shall recuse themselves and inform the parties immediately.
- 1-2-2.2 Demand for Change of Judge – How Made
- 1-2-2.3 Subject to the provisions of this section, any party to a civil or criminal action or proceeding pending in the District Court may obtain a change of the judge before whom the trial or any proceeding with respect thereto is to be heard by filing with the clerk of court a written demand for change of judge either:
- a. By the personal signature of the party, if an individual, and by a personal signature of an authorized officer or manager, if a corporation, limited liability company, or association; or
 - b. By the attorney for a party with the permission of the party, in which event the attorney shall file with the demand a certificate that the attorney has mailed a copy of the demand to such party.
- 1-2-2.4 Demand Invalid if Not Filed Within Ten Days
The demand is invalid unless it is filed with the clerk of court no later than ten (10) days after notice of the assignment of the presiding judge.
- 1-2-2.5 Rights of Additional Parties to Demand Change of Judge
- 1-2-2.6 Any party who had been added, voluntarily or involuntarily, to the action or proceeding after the notice of assignment shall have the right to file a demand for change of judge within ten (10) days after that party has been added.
- 1-2-2.7 Demand for Change of Judge – Good Cause
No demand for a change of judge may be sought, except for good cause shown, after the judge has ruled upon any matter pertaining to the action or proceeding in which the demanding party was heard or had an opportunity be heard.
- 1-2-2.8 Demand for Change of Judge – Contents
The demand for change of judge must state that it is in good faith and not for the purposes of delay. It must indicate the nature of the action or proceeding, designate the judge sought to be disqualified, the grounds for the demand, and certify on whether or not the presiding judge has ruled on any matter pertaining to the action or proceeding in which the moving party was heard or had an opportunity to be heard. The grounds for demand for change must be specific and are not limited to conflict of interest or lack of impartiality, or the appearance of such.
- 1-2-2.9 Demand to be Forwarded to Judge
Upon the filing of the demand for a change of judge, the clerk shall immediately send a copy of the demand for a change of judge to the Chief Judge and the judge sought to be disqualified. In

the event that the Chief Judge is sought to be disqualified, the demand shall be forwarded to an associate judge.

1-2-2.10 Judge Sought to be Disqualified Has No Further Authority

Upon receipt of a copy of the demand for change of judge, the judge sought to be disqualified shall have no authority or discretion to determine the timeliness or validity of the demand and shall proceed no further or take any action in the action or proceeding and is thereafter disqualified from doing any further act in the case unless the demand is invalidated by the Chief Judge or associate judge, as applicable. The judge sought to be disqualified shall promptly submit to the Chief Judge or associate judge, as applicable, any comments the judge may have regarding the demand. If the Chief Judge or associate judge, as applicable, thereafter invalidates the demand because it was not timely filed or for other reasons, the judge sought to be disqualified shall resume jurisdiction in the case and hear and determine the case to conclusion.

1-2-2.11 Subsequent Demands for a Change of Judge

1-2-2.12 If a demand for a change of judge has been granted and another judge assigned, the subsequent presiding judge may decline to grant another demand for change of judge made by a party whose interests in the matter are not adverse to those of the party whose demand was granted. If there is a second demand for a change of judge, the party making the demand must set forth with specificity as to the new grounds for the demand and as required under section 1-2-2.6. The subsequent presiding judge is not disqualified until such time that the demand for a change of judge has been reviewed and granted. A subsequent demand for a change of judge must be made within five days after receiving notice of the assignment of a judge.

1-2-2.13 Prompt Designation of New Judge

Upon receipt of a timely filed demand for a change of judge from the clerk of court, and if a change of judge is granted, the Chief Judge or associate judge, as applicable, shall promptly designate another judge to act in the place of the judge disqualified within five days.

1-2-2.14 New Judge to Proceed Promptly

1-2-2.15 The judge designated, after receiving such notice of the assignment from the Chief Judge or associate judge, as applicable, shall promptly proceed with the hearing or trial, first giving to the parties or other attorneys reasonable notice of the date of the hearing or trial.

1-2-3 Attorney Licensing

1-2-3.1 License Required

Each person practicing law in the courts of the Fort Berthold District Court shall be required to be licensed as provided in this Section and Section 1-2-4 of this Chapter.

1-2-3.2 Annual License

An attorney licensed to practice law in any state or federal court shall be eligible for admission to the Bar of the Fort Berthold District Court. An application shall be completed along with the passing of the Three Affiliated Tribes Bar Examination. The application shall be reviewed and approved by the Chief Judge. The bar examination shall be reviewed and approved by the Three Affiliated Tribes Bar Board. Dues will be due by January 15 of each year, and the license fee shall be determined by the Chief Judge. Upon payment of the license fee and approval of the application for admission, the Fort Berthold District Court shall then issue a license to practice law in the Fort Berthold District Court, valid for calendar year, January 1 to December 31. License fees shall not be prorated.

1-2-3.3 Three Affiliated Tribes Bar Examination

The Three Affiliated Tribes Bar Board may create a bar examination for the purposes of ensuring the knowledge, understanding, and competency of the individuals applying for admission to practice before the Fort Berthold District Court. The bar examination shall include a history of the Three Affiliated Tribes, understanding of the Tribal Constitution, Tribal Code and Rules of Procedures, and an ability to demonstrate legal writing skills. The bar examination shall be completed by the applicant at home and verified, under oath, of their completion of the bar examination. All currently licensed attorneys are exempted from the bar examination.

1-2-3.4 Attorney License Renewal

The clerk may mail a renewal notice and request for annual license fees in lieu of a yearly application to licensed attorneys, who must certify upon renewal of their licenses that they remain in good standing in the Bar of the Fort Berthold District Court and in the state bar or federal court in which they are admitted.

1-2-3.5 Pro Hac Vice

An attorney may appear *pro hac vice* (for this case) upon motion for limited admission, and payment of an application fee determined by the Chief Judge. The Chief Judge may approve the motion upon a showing that an attorney is licensed, in good standing in any state or federal court, and associated with a licensed attorney with the Fort Berthold District Court.

1-2-3.6 Discipline

Application for discipline of an attorney or advocate shall be made to the Three Affiliated Tribes Bar Board, and in the event that the Three Affiliated Tribes Bar Board is unavailable or inactive, such application shall be made to the MHA Nation Supreme Court. Upon notice and a hearing, the license of an attorney may be suspended or revoked for cause shown in violation of the Three Affiliated Tribes of the Fort Berthold Reservation Rules of Professional Conduct. Disciplinary action by another licensing agency may be cause for similar sanction after notice and a hearing.

1-2-4 Advocate Licensing

1-2-4.1 Advocate

An advocate is a person who supports and pleads the cause of a party in Court proceedings and does not qualify for an attorney license under Section 1-2-3.

1-2-4.2 Advocate License

1-2-4.3 The application fee shall be determined by the Chief Judge, and such application fee is non-refundable. An applicant must meet the following standards:

- a. Has an Associate's or Bachelor's degree in a law related field, paralegal experience, or substantial experience in the legal system;
- b. A person with a felony is not eligible unless pardoned or rehabilitated;
- c. An applicant must demonstrate character and fitness to practice law; and
- d. Must provide a certificate of attendance certifying their attendance in Tribal Court proceedings for a minimum of 40 hours or completion of an advocate training course. The certification of attendance must be signed by either the Chief Judge or any other Court staff authorized by the Court to confirm attendance.

Upon payment of the application fee and approval of the application for admission, the Fort Berthold District Court shall then issue a license to practice law in the Fort Berthold District Court, valid for calendar year, January 1 to December 31.

1-2-4.4 Advocate Examination

An advocate must take and pass the Fort Berthold Bar Examination as set out in Section 1-2-3.3 as part of the application. The Three Affiliated Tribes Bar Board will conduct and score the examination. An advocate who passes the examination may be fully admitted to practice in the Fort Berthold District Court.

1-2-4.5 Renewal of Advocate License

The clerk may mail a renewal and request for annual license fees in lieu of a yearly application to licensed advocates, who must certify upon renewal of their license that they remain in good standing at the Fort Berthold District Court. The annual fee is due January 15 of each year.

1-2-4.6 License Exemptions. The following persons not licensed as an attorney or advocate may appear in Court:

- a. Persons appearing pro se or representing themselves;
- b. An interpreter or person assisting a person in court and no formal appearance is made;
- c. A worker in a domestic abuse or similar program;
- d. A law student supervised by an attorney or advocate; or
- e. A guardian ad litem or other person appointed by the Court.

1-2-4.7 Discipline

The license of the applicant may be suspended or revoked for cause shown in violation of the Three Affiliated Tribes of the Fort Berthold Reservation Rules of Professional Conduct. Disciplinary action by another licensing agency may be cause for similar sanction after notice and a hearing.

1-2-5 **Three Affiliated Tribes Bar Association and Board**

1-2-5.1 Membership

In order to be admitted to the Association, a person must:

- a. Be at least 21 years of age when the application is submitted to the Association;
- b. Lay advocates must possess a minimum of an Associate of Arts degree in a law related field or practical experience in a law related profession;
- c. Attorneys must be a graduate of an ABA-accredited law school and a member of good standing in a Bar Association of any jurisdiction;
- d. Be a person of good moral character and personal integrity;
- e. Have no felony convictions or equivalent criminal offenses in any jurisdiction provided, however, upon application to the Board, and upon adequate showing to the Board, this provision shall not be a bar to admission if the Board, in its sole and absolute discretion, shall determine that such felony conviction or equivalent criminal offense should not bar the applicant from admission;
- f. Have no conviction of any degree for an offense involving moral turpitude or dishonesty in any jurisdiction, provided, however, upon application to the Board, and upon adequate showing to the Board, this provision shall not be a bar to admission if the Board, in its sole and absolute discretion shall determine

that such offense involving moral turpitude or dishonesty should not bar the applicant from admission;

- g. Not be currently or have been in the past, disbarred or under suspension by any Bar Association for:
 - i. Criminal activity;
 - ii. Violation of ethical standard;
 - iii. Malpractice;
 - iv. Any matter concerning personal integrity; or
 - v. Violations of such code of professional responsibility as may be adopted by the Board.
- h. Upon application to the Board, and upon adequate showing to the Board, nothing in this provision shall be a bar to admission, if the Board, in its sole and absolute discretion shall determine that such disbarment, suspension or violation should not bar the applicant from admission.

1-2-5.2 Categories

The Association shall consist of the following classes of membership:

- a. Regular Active Members. Members who have paid their annual dues and who are in good standing with the Association.
- b. Honorary Members. Employed Judges of the Fort Berthold District Court, active members of the staff of the Fort Berthold District Court, the prosecutors and public defenders employed by the Fort Berthold District Court, and the Three Affiliated Tribes legal counsel.

Honorary members shall have full voting privileges, but shall not be assessed annual membership dues.

- c. Law Student Members. Law students actively studying law at an accredited law school. Law students shall not have voting privileges, nor shall be allowed to hold office in the Association or be on the Board.

1-2-5.3 Governing Body

The governing body of the Association shall be known as the Board of Directors (hereinafter "Board"), composed of at least four (4) and no more than seven (7) members.

1-2-5.4 Admission

Membership shall be granted upon completion of an application and payment of dues. Eligibility is determined by the Board or the Fort Berthold District Court Chief Judge as their designated representative.

1-2-5.5 Rights and Privileges

Members shall have the right to vote, hold office, and enjoy other privileges as determined by the Board.

1-2-5.6 Terms

The Board shall serve staggered terms of three (3) years. A member may serve unlimited terms.

1-2-5.7 Officers

1-2-5.8 The Board shall elect officers from among its members, including but not limited to a President, Vice President, Secretary, and Treasurer. A member may serve two consecutive (2) terms in the same position.

1-2-5.9 Duties

The Board shall be responsible for setting the strategic direction of the Bar Association, managing finances, overseeing activities and developing programs.

1-2-5.10 Powers

1-2-5.11 The Board shall have the following powers:

- a. To approve and issue all licenses to practice in the Fort Berthold District Courts or may appoint the Fort Berthold District Court Chief Judge as their designated representative;
- b. To investigate in a prompt manner any complaints of attorney, or advocate misconduct or violation of the Fort Berthold District Court Rules of Professional Conduct that is reported to the Board, or to the Chief Judge, if the Board is unavailable or inactive;
- c. To hold such hearings and render a decision as may be necessary in any proceeding involving attorney or advocate misconduct;
- d. With the advice of the Chief Judge, to develop and approve rules and procedures for advocate and attorney discipline and hearings as may be necessary;
- e. With the advice of the Chief Judge, to develop and recommend for approval by the Tribal Business Council, a Code of Professional Conduct for those who practice before the Fort Berthold District Court;
- f. With the advice of the Chief Judge, to establish and administer such examination to be licensed in the Fort Berthold District Court;
- g. With the advice of the Chief Judge, and at the request of the Tribal Business Council, to develop for approval by the Tribal Business Council, an attorney examination for licensure, otherwise known as a “bar exam”;
- h. At the request of the Chief Judge, to recommend for approval by the Tribal Business Council local rules of Court;
- i. To advise the Court and the Tribal Business Council, as requested, concerning the amendment of those rules of civil and criminal procedure, rules of evidence as are adopted by the Tribal Business Council as specified in the Tribal Code of Law, and to seek approval for such amendments from the Tribal Business Council;
- j. To perform such other duties as may be assigned from time to time to the Board by the Court or the Tribal Business Council.

1-2-6 **[Reserved]**

1-2-7 **Contempt of Court**
[REPEALED, MOVED TO TITLE II]

1-2-8 **Local Rules**

1-2-8.1 Authority

The Fort Berthold District Court is authorized to prescribe rules for the conduct of business, including local court rules, practice and evidence. The rules are designed to assist in the efficient handling of motions, discovery, scheduling and other matters that arise.

1-2-8.2 Copies Available

A copy of the local rules will be made available to those who practice in the court and the general public. A copy will be inserted in the Code in this section or as an appendix to the Code.

Legislative History: Resolution #97-229-DSB; Resolution No. 97-43-D5B; Resolution #89-235-7h

1-3 **Evidence**

1-3-1 **Scope**

These rules will apply to civil and criminal proceedings as provided by law. In small claims court, the rules of evidence will be utilized to ensure an inexpensive and fair determination of a matter.

1-3-2 **Federal Rules**

Except as otherwise provided in other Chapters or Titles within the Tribal Code, the most current Federal Rules of Evidence shall apply in all cases. The court through local rules and for good cause may retain authority to implement evidence requirements for specific cases.

1-3-3 **Indian Customs**

These Rules of Evidence do not supplant oral history, language, customs, and other traditional laws of the Tribe. In a proceeding in which Indian customs are at issue, or in which traditional law is sought to be applied, the court shall consider customs, practices or traditional law and may, without motion from any party, call upon Tribal elders and other reliable sources for guidance.

1-3-4 **Reports**

Medical, police and other similar reports shall be admissible when there is a showing of reliability and authentication. A certification by the author or custodian of a document is prima facie evidence that it is a reliable document. A party has the option of calling a person as a witness if challenges are made to the admissibility of such document or statement.

1-3-5 **Reserved**

1-4 **Procedure for Enacting Tribal Code**

1-4-1 **Purpose**

The Purpose of this Chapter is to provide procedures governing the enactment of Tribal codes by the Tribal Business Council of the Three Affiliated Tribes to ensure that Tribal codes are enacted in a uniform and consistent manner, to ensure an adequate review period by the Council prior to enactment of any proposed code, and to allow maximum public participation in the enactment of Tribal codes by providing for a public notice and comment period.

1-4-2 **Application**

The rules set forth in this Chapter apply to the drafting, review and enactment of any Tribal code and any amendments to a current Tribal code. These rules may also be applied to the adoption by the Tribal Business Council of Council policy at the option of the Council.

1-4-3 **Definitions**

1-4-3.1 “Council” means the Tribal Business Council of the Three Affiliated Tribes.

1-4-3.2 “Amendment” means any change or proposed change to any provision of the Tribal Code.

- 1-4-3.3 “Committee” means a Standing Committee of the Tribal Council as established by the Council including but not limited to the Natural Resources, Judicial, Economic Development, Executive, and Health and Human, and Executive Committee.
- 1-4-3.4 “Code” means a law that is enacted by the Council and codified into the Three Affiliated Tribes’ Tribal Code.
- 1-4-3.5 “Enact” means an action by the Council establishing a proposed code as Tribal law.
- 1-4-3.6 “Policy” means a document setting forth for general principles and rules governing the management of the Tribal government on any particular subject matter but that is not a Tribal code.
- 1-4-3.7 “Proposed code” means a draft Tribal code that is proposed for enactment, or any amendment to an existing Tribal code that is proposed for enactment.
- 1-4-3.8 “Read” means the formal action and process by which the Council or Committee reviews a proposed code during a formal session.

1-4-4 Process for Drafting Tribal Laws

The following process shall be adhered to when proposing and drafting Tribal codes:

- a. Proposals for new Tribal codes or amendments to existing codes may be made at the direction of the Tribal Council, a Committee, or any member of the Council or at the request of or any Tribal program or a tribal member.
- b. When the Council directs that a Tribal code or an amendment to a Tribal code be drafted, the Council shall direct a Tribal program or department to be responsible for drafting and submitting the code for approval to the proper Committee and Council for review, reading and enactment in accordance with this Chapter.
- c. All proposed codes drafted and enacted as Tribal codes and codified as part of the Three Affiliated Tribes’ Tribal Code shall be assigned a Title number or designated part of a current Tribal Code Title. The Three Affiliated Tribes Tribal Code shall be organized according to titles, chapters, and sections.
- d. The Tribe’s Legal Department shall review and approve all proposed codes prior to submission for the third reading by the Council.

1-4-5 Reading and Committee and Council Review Requirements

- 1-4-5.1 All proposed codes shall be read by a Committee and the Council in total a minimum of three times.
- 1-4-5.2 The first draft of a proposed code shall be submitted first to the committee having jurisdiction over the subject matter of the proposed code for the first reading. The proposed code shall be clearly marked “first draft.” The proposed code shall be submitted to each member of the Committee with a memorandum explaining the proposed code at least five (5) days prior to the date of the Committee meeting at which the proposed code will be read by the Committee. The Committee shall conduct the first reading of the proposed code at the meeting in which it has been properly placed on the Committee agenda.
- 1-4-5.3 Upon submission to the Committee having jurisdiction over the proposed code, the Committee shall conduct the first reading of the proposed code and vote to move it forward to the Tribal Business Council or it may vote to make amendments to the first draft. Any amendments to the first draft made by the committee shall be incorporated into the second draft by the program or department responsible for drafting the proposed code.

1-4-5.4 Upon referral by the Committee, the second draft of the proposed code shall be placed on the agenda for the next regular Tribal Business Council meeting under the standing Committee’s agenda. The Council shall then conduct the second reading of the proposed code and may vote to make further amendments to the proposed code at that time. Any amendments made by the Council to the second draft of the proposed code shall be incorporated into a third draft. Upon approval of a second or third draft by the Council, the proposed code shall be referred for public notice and comments as set forth in Section 1-4-6. The Council may also vote to table the proposed code for further action, information, or amendments.

1-4-5.5 The proposed code shall then be published and be opened for a thirty (30) day public comment period. The published draft shall be clearly marked as the “Public Comment” draft.

1-4-6 Public Notice and Comment Period

1-4-6.1 The Public Comment draft shall be published in the MHA Times newspaper and may also be posted on the Tribe’s website and on the Tribe’s email system for a thirty-day period with a notice in substantially the following form:

Date:

To the members of the Three Affiliated Tribes:

Please take Notice that the Tribal Business Council of the Three Affiliated Tribes has approved the following Draft of the Proposed Code to be considered for enactment by the Tribal Business Council at its regularly scheduled Tribal Business Council Meeting on _____. The Tribal Business Council is taking comments from the public on the proposed code and will consider your comments when it takes final action on the enactment of the proposed code. You shall have thirty days from the date of this publication to submit comments. Written comments should be submitted to the Office of the Tribal Secretary by either hard copy or electronic transmission via the Tribal email system. Comments must be in writing and be signed by the individual submitting the comments. Comments shall be received until_____.

1-4-6.2 The proposed code and Notice may also be published in local and segment Tribal offices.

1-4-6.3 All comments must be in writing and be signed by the individual submitting the comments.

1-4-6.4 Comments shall be submitted to the Office of the Tribal Secretary in a sealed envelope and be identified on the outside of such envelope as comments on the proposed code. Comments may also be submitted via electronic transmission via the Tribal email system to the Tribal Secretary’s Office.

1-4-6.5 Copies of the comments shall be provided to the Tribe’s Legal Department or to the program or individual responsible for drafting the proposed code. Originals of all comments shall be maintained by the Secretary’s office.

- 1-4-6.6 The final draft shall not be acted upon by the Tribal Business Council until the comment period has ended.
- 1-4-6.7 The program/individual responsible for drafting the proposed code shall ensure that the proposed code is placed on the Tribal Business Council Agenda in accordance with the date set out in the Notice and shall also ensure that each member of the Council is furnished with copies of the Comments and the final draft of the proposed code at least seven days prior to the dates set for enactment of the proposed code.
- 1-4-6.8 The Tribal Business Council shall conduct the final reading of the proposed code and may take any comments into consideration when making a final decision to enact the proposed code or use the comments to make amendments to the final draft. Comments shall not be binding on the Council. If the Council votes to make amendments to the final draft the amendments shall be incorporated into the final enacted draft and the proposed code may be enacted at that time.
- 1-4-6.9 The final code draft shall be adopted by resolution of the Tribal Business Council and shall become effective immediately upon its enactment unless a later date is indicated by the Tribal Business Council.
- 1-4-6.10 In the event of an emergency as determined by the Tribal Council, any provisions of this Chapter may be waived by the Council.
- 1-4-6.11 Copies of the final adopted code shall be forwarded to the Tribal Court and other Tribal agencies as appropriate by the Tribe's Legal Department.
- 1-4-6.12 The Tribe's Legal Department, Tribal Court, and the Secretary's Office shall be responsible for maintaining a copy of the Tribal Code.

Legislative History: Reso # 08-56-MP.

1-5 **Rules of Appellate Procedure**

1-5-1 **Title – How Cited**

1-5-1.1 These Rules shall be known as the Three Affiliated Tribes Rules of Appellate Procedure and may be cited as TAT.R.App.P.

1-5-2 **Scope and Application of Rules**

1-5-2.1 **Scope**

These Rules shall govern the procedures in the appeals from civil and criminal judgments and/or final orders of the District Court and Juvenile Court.

1-5-2.2 **Jurisdiction**

These rules do not extend or limit the jurisdiction of the Supreme Court.

1-5-2.3 **Parties**

The party first filing the notice of appeal is the appellant and the responding party is the appellee. If both parties to an action file notice on the same day, the plaintiff/petitioner in the lower court proceeding is the appellant.

1-5-2.4 **Suspension of Rules**

On its own, or upon a party’s motion, the Supreme Court may suspend any provision of these Rules in a particular case and order proceedings as it directs to expedite its decision or for other good cause. Unless an Appellate Rules emergency exists, the Supreme Court’s suspension of any provision of these rules must be limited to thirty (30) days.

- a. In an Appellate Rules Emergency. The Tribal Business Council may declare an Appellate Rules emergency if it determines that extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court’s ability to perform its functions in compliance with these rules.
 - i. Content. The declaration must be limited to a stated period of no more than ninety (90) days.
 - ii. Early Termination. The Tribal Business Council may terminate a declaration of an Appellate Rules emergency before the termination date.
 - iii. Proceedings in a Rule Emergency. When a Rules emergency is declared the Supreme Court may:
 1. Suspend in all or part any provision of these Rules;
 - iv. Order proceedings as it directs.

1-5-3 Definitions

As used in these Rules, the following terms shall have the following definitions:

- 1-5-3.1 “District Court” means the Fort Berthold District Court.
- 1-5-3.2 “Final judgment or order” means the last decision from the lower court that resolves all issues in dispute and settles the parties’ rights with respect to those issues. A final judgment leaves nothing to be decided except how to enforce the judgment, whether to award costs, and whether to file an appeal.
- 1-5-3.3 “Interlocutory order” means a ruling or decision made by the lower court that is not the final judgment or disposition of the case. Not all issues qualify for interlocutory appeal, only those that cause irreparable harm or impact fundamental legal rights.
- 1-5-3.4 “Juvenile Court” means the MHA Nation Juvenile Court.
- 1-5-3.5 “Lower court” means the court from which a judgment or order is being appealed to the Supreme Court.
- 1-5-3.6 “MHA Nation” or “Tribe” means the Three Affiliated Tribes of the Fort Berthold Reservation.
- 1-5-3.7 “Supreme Court” means the MHA Nation Supreme Court.
- 1-5-3.8 “Tribal Business Council” means the governing body of the MHA Nation.

1-5-4 Appeals as of Right – How Taken

1-5-4.1 Appeal as of Right

Any party to an action in the lower courts shall have the right to appeal any final judgment or order in a civil or criminal case or juvenile proceeding. The grounds and timeframes for criminal appeals are addressed in section 1-5-7.

1-5-4.2 An appeal to the Supreme Court may be taken only by filing a notice with a Clerk of the District Court within the time allowed by subsection 1-5-5.1.

1-5-4.3 The notice of appeal must:

- a. Specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney standing for more than one party may describe those parties in such terms as “all plaintiffs,” “the defendants,” “the plaintiffs A, B, et al.,” or “all defendants except X”;

- b. Name the judgment – or the appealable order – from which the appeal is taken; and
- c. Name the court to which the appeal is taken.

1-5-4.4 An appeal should not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice, or for failure to properly designate the judgment if the notice of appeal was filed after the entry of the judgment and designates an order that merged into that judgment.

1-5-4.5 Service of the Notice of Appeal.

The Clerk of the Supreme Court must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record – excluding the appellant's – or, if a party is proceeding pro se, the party's last known address. The Clerk of the Supreme Court shall note on each copy when the notice of appeal was filed.

- a. Should a party file an election to receive electronic filings with the Supreme Court, the Clerk shall place the record of the election into the case file and shall serve all notices or other filings at the email address provided by the attorneys of record or the parties to the action if not represented by counsel.
- b. The Clerk of the Supreme Court's failure to serve notice does not affect the validity of the appeal.

1-5-4.6 Payment of Fees.

Upon filing a notice of appeal, the appellant must pay the Clerk of the District Court all required fees. The fee schedule for appeals and the eligibility for fee waivers shall be promulgated by the Court Administrator and updated on an annual basis. Such fee schedule and waiver information shall be readily available to all parties.

1-5-5 Appeal as of Right – When Taken

1-5-5.1 Filing of Notice of Appeal, Civil and Criminal

An appeal of a final civil judgment or order of the District Court or Juvenile Court shall be taken by filing a notice of appeal with the Clerk of the Supreme Court within thirty (30) days of the date of entry of final judgment or order appealed from. A judgment or order is entered for purposes of this section when the lower court serves the parties with a Notice of Entry of Judgment or when it is otherwise confirmed that all parties have received actual notice thereof. An appeal of a criminal judgment or order shall be filed in accordance with section 1-5-7.

1-5-5.2 Motion for Extension of Time

The District Court may extend the time to file a notice of appeal if:

- a. A party so moves no later than thirty (30) days after the time prescribed by subsection 1-5-5.1; and
- b. Regardless of whether its motion is filed before or during the thirty (30) days after the time prescribed by subsection 1-5-5.1 expires, that party shows excusable neglect or good cause.
- c. A Motion for Extension of Time must be served on the other parties in accordance with section 1-5-10.
- d. No extension of time may exceed thirty (30) days after the prescribed time or fourteen (14) days after the date when the order granting the motion is entered, whichever is later.

1-5-5.3 Mistaken Filing in Lower Court

If any filing after the notice of appeal is mistakenly filed in the District or Juvenile Court, the Clerk of that lower court must note on the notice the date it was received and forward it to the Clerk of the Supreme Court. The notice shall then be considered filed in the Supreme Court on the date so noted.

1-5-6 Appeal by Permission

1-5-6.1 How Taken

An appeal from an interlocutory order in a civil matter may be sought by filing a petition to appeal with the Supreme Court within five (5) days after the entry of such order for which appeal is sought by the District or Juvenile Court. The party seeking appeal must serve the petition to appeal on all other parties to the District or Juvenile Court action.

1-5-6.2 Forms or Content of Petition

The petition to appeal must include the following:

- a. The facts necessary to understand the question on appeal;
- b. The question itself;
- c. The relief sought;
- d. The reasons why the appeal should be allowed; and
- e. An attached copy of the order, decree, or judgment complained of and any related opinion or memorandum.

1-5-6.3 A party may file an answer in opposition or a cross-petition within ten (10) days after the petition is served.

1-5-6.4 The appellant must pay all required fees within fourteen (14) days after an order granting permission to appeal is entered.

1-5-6.5 A notice of appeal by permission not be filed. The date when the order granting permission to appeal is entered shall serve as the date of the notice of appeal for calculating time under these rules.

1-5-6.6 In all cases of filing of interlocutory appeal, parties must provide immediate notice to the lower court of such filings.

1-5-7 Appeal in a Criminal Case

1-5-7.1 From what a Defendant may Appeal

- a. An appeal may be taken by the defendant from:
 - i. A verdict of guilt.
 - ii. A final judgment of conviction.
 - iii. An order refusing a motion in arrest of judgment.
 - iv. An order denying a motion for a new trial.
 - v. An order made after judgment affecting any substantial right of the defendant.

1-5-7.2 From what the Tribe may Appeal

- a. An appeal may be taken by the Tribe from:

- i. An order quashing an information or complaint any count thereof, except that no appeal shall lie where double jeopardy, under Tribal law, prohibits further prosecution.
- ii. An order granting a new trial.
- iii. An order arresting judgment.
- iv. An order made after judgment affecting any substantial right of the Tribe.
- v. An order granting the return of property or suppressing evidence, or suppressing a confession or admission, when accompanied by a statement of the prosecuting attorney asserting that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding. Such appeal shall not be made after the defendant has been put in double jeopardy and shall be before the verdict or finding on an information or complaint.

1-5-7.3 The appeal in all such cases shall be diligently prosecuted.

1-5-7.4 Time for Filing a Notice of Appeal

- a. In a criminal case, a defendant's notice of appeal must be filed in the Supreme Court within thirty (30) days after the later of:
 - i. The entry of either the judgment or the order being appealed; or
 - ii. The filing of the government's notice of appeal.
- b. When the government is entitled to appeal, its notice of appeal must be filed in the Supreme Court within thirty (30) days after the later of:
 - i. The entry of the judgment or order being appealed; or
 - ii. The filing of a notice of appeal by any defendant.

1-5-7.5 Filing Before Entry of Judgment

A notice of appeal filed after the court announces a decision, sentence, or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

1-5-7.6 Effect of a Motion on a Notice of Appeal

- a. If a defendant timely makes any of the following motions to the lower court under the Three Affiliated Tribes Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within fourteen (14) days after the entry of the order disposing of the last such remaining motion, or within fourteen (14) days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:
 - i. For judgment of acquittal;
 - ii. For a new trial; or
 - iii. For arrest of judgment.
- b. A notice of appeal filed after the lower court announces a decision, sentence, or order – but before it disposes of any of the motions referred to in section 1-5-7.4(a) – becomes effective upon the later of the following:
 - i. The entry of the order disposing of the last such remaining motion; or
 - ii. The entry of the judgment of conviction.

1-5-7.7 Motion for Extension of Time

Upon a finding of excusable neglect or good cause, the District Court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal

for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed by subsection 1-5-7.4.

1-5-7.8 The provisions of this section shall be liberally construed to effectuate its purpose.

1-5-8 Expedited Appeals

1-5-8.1 The Supreme Court, on its own motion or on the motion of the parties, may expedite an appeal for briefing and oral argument. Any motion to expedite should be submitted simultaneously with the notice of appeal or petition to appeal. The motion to expedite should state clearly the reasons supporting expedition, the ability of the parties to present the appeal on the existing record, and the need for oral argument.

1-5-8.2 A motion to expedite should state the position of opposing counsel. If opposing counsel agrees to expedited briefing, the motion should set forth the schedule agreed to by counsel.

1-5-8.3 The motion set forth good cause to expedite the appeal, which includes but is not limited to:

- a. Situations where, absent expedited treatment, irreparable harm may occur or the appeal may become moot;
- b. A pressing concern to the public;
- c. The existence of an imminent health risk to one of the parties; and
- d. Issues impacting the timelines and integrity of elections.

1-5-8.4 The granting of a motion to expedite affects the briefing and/or oral argument of the case; the timing of the ultimate disposition rests within the discretion of the Supreme Court, subject to the provisions of section 1-5-23.

1-5-8.5 If the Supreme Court denies a motion to expedited appeal, it must inform the parties promptly and without undue delay, through electronic or oral communication of the denial and, if the notification is oral, follow up with the parties by written notice. Written notice of the denial must include:

- a. The reason for the denial; and
- b. An explanation that the appeal will be handled under the standard process and timelines.

1-5-9 Stay or Injunction Pending Appeal

1-5-9.1 Initial Motion

Subject to subsection 1-5-9.2, the moving party must move first in the lower court for the following relief:

- a. A stay of the judgment or order of the lower court pending appeal;
- b. Approval of a bond or other security provided to obtain a stay of judgment; or
- c. An order suspending, modifying, restoring, or granting an injunction with an appeal is pending.

1-5-9.2 Motion in the Supreme Court

A motion for the relief mentioned in subsection 1-5-9.1 may be made to the Supreme Court by filing with the Clerk of the Supreme Court.

- a. The motion must:
 - i. Show that moving first in the lower court would be impracticable, extraordinary, or cause irreparable harm;

- ii. State that, a motion under subsection 1-5-9.1 having been made, the lower court denied the motion or failed to afford the relief requested and state the reasons given by the lower court for its action;
 - iii. State the reasons for granting the relief requested and the facts relied on;
 - iv. Include original copies of sworn statements or other sworn statements supporting facts subject to dispute; and
 - v. Include relevant parts of the record.
- b. The moving party must serve notice of the motion to all parties.
 - c. The Supreme Court may condition relief on a party's filing of a bond or other appropriate security in the lower court.

1-5-10 Release – Pending Appeal of a Criminal Conviction

1-5-10.1 Motion to Lower Court

Application for the release or modification of the terms of release of a convicted defendant pending appeal of the judgment of conviction shall first be made by motion in the lower court. If the lower court refuses to release pending appeal, or imposes conditions of release, the lower court shall state in writing the reasons for the action taken.

1-5-10.2 Motion to the Supreme Court

After a motion for release or modification of the terms of release has been filed with and decided by the lower court, a subsequent motion may be made to the Supreme Court if an appeal is pending. Such a motion shall be determined promptly after appellant and appellee present their oral and/or written arguments on the motion.

1-5-11 Record and Transmission of Record

1-5-11.1 Composition of Record on Appeal

The following items constitute the record of appeal:

- a. The original pleadings, motions, and exhibits filed in the lower court;
- b. The electronic transcript of the proceedings, if requested; and
- c. A certified copy of the final judgment or order appealed from.

1-5-11.2 Transcript

Within fourteen (14) days after filing the notice of appeal or the entry of an order granting permission to appeal, the appellant may request a transcript of the proceedings in writing from the Clerk of the District Court, including the caption of the case, date(s) of trial or hearing, the number of copies required, the names and postal addresses or e-mail addresses of the parties to be served, and whether they are to be served with electronic or paper copies. The Clerk of the lower court must then complete the transcription within fifteen (15) days of receipt of the request and file it electronically with the Clerk of the Supreme Court unless otherwise directed by the Supreme Court. Extension of time to prepare a transcript may be granted by the Supreme Court for good cause, and for no longer than a period of fifteen (15) days.

1-5-11.3 Statement of Proceedings and Evidence when No Record Made or a Transcript is Otherwise Unavailable

If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection, and file it with the Clerk of the Supreme Court. The appellant shall serve a copy of the statement on appellee, and the appellee shall have fourteen (14) days to file a response with any objections

and/or proposed amendments to the statement with the Clerk of the Supreme Court. The Supreme Court shall settle the objections, make any necessary amendments, and finally approve the statement for inclusion in the record of appeal.

1-5-11.4 If a transcript is requested, the transcript must be complete, unless a stipulation is obtained from all parties specifying the portions that are not required for the purposes of the appeal or as requested from and allowed by the Supreme Court.

1-5-11.5 A transcript of any record of jury voir dire is not required unless specifically requested by a party.

1-5-11.6 Transmission of the Record on Appeal

- a. The Clerk of the lower court completes the designation of the trial record by making copies as stated above, attaching them to a verified cover letter attesting to their accuracy and completeness, and delivering the record on appeal to the Supreme Court within thirty (30) days after the notice of appeal is filed by appellant unless the Supreme Court or District Court extends the time in accordance with the law; and
- b. The Clerk of the Supreme Court shall promptly enter the Notice of Appeal and the copies of the trial record documents and exhibits into the appellate file upon receipt thereof, but in no event more than ten (10) days after receipt of the Notice of Appeal; and
- c. When the record on appeal has been entered into the appellate file by the Clerk of the Supreme Court, the Clerk shall promptly transmit a complete copy thereof to each Justice of the Supreme Court who has been designated to hear the appeal and serve each party with a Notice of Transmission of Record by way of electronic mail and by regular mail to the parties.

1-5-12 Costs

1-5-12.1 Costs

The parties shall bear their own costs of the appeal, subject to the application of subsection 1-5-12.2 and section 1-5-20, except in cases where an indigent defendant is a party, in which case the Supreme Court may waive such costs.

1-5-12.2 If an appeal is dismissed by the Supreme Court, the Court may, in its discretion, order the appellant to pay all costs of the appeal, in the case of a frivolous appeal. If the judgment of the lower court is affirmed, the Court, in its discretion, may order the appellant to pay all costs of the appeal or direct a party to pay a designated portion of the costs. If the judgment of the lower court is reversed, the Supreme Court, in its discretion, may order the appellee to pay all costs of the appeal, or direct a party to pay a designated portion of the costs.

1-5-13 Filing and Service of Documents on Appeal

1-5-13.1 Filing

Parties to an appeal shall file one (1) copy of all documents required or permitted with the Clerk of the Supreme Court. The Clerk of the Supreme Court may receive copies electronically via email, in person, or by mail. Documents filed in person, electronically via email to the designated Supreme Court email address, or by mail must bear the Supreme Court stamp noting the date of submission. All documents filed electronically shall be considered filed on the date submitted, even if filed after normal Court business hours.

1-5-13.2 Service of Papers

Copies of all documents filed with the Clerk of the Supreme Court by parties to an appeal, either civil or criminal, shall be sent by regular mail to opposing parties, or by regular mail or electronically to their attorney if represented by counsel, by the party filing such papers. All papers filed with the Clerk shall be accompanied by a written statement of the party filing such papers, or his legal representative, certifying that such papers have been served on the opposing party(ies) or their legal counsel.

1-5-14 Brief, Memoranda, and Statements

1-5-14.1 Time for Filing

- a. Within thirty (30) days after the appellant has received the Notice of Transmission of the Record under subsection 1-5-11.6(c), or in such other times as ordered by the Supreme Court, the appellant shall file a written brief, memorandum, or statement in support of his appeal with the Clerk of the Supreme Court.
- b. The appellee shall have twenty (20) days after receipt of appellant's brief, memorandum or statement within which to file a response brief, memorandum, or statement.
- c. The appellant may file a reply brief to the appellee's response brief within ten (10) days after receipt of the appellee's response brief.
- d. Filing and service shall be accomplished in the manner provided in section 1-5-13. No further response shall be allowed to either party without leave of court.

1-5-14.2 Contents of Brief:

- a. Appellant's Brief. The appellant's brief must contain:
 1. A statement of the issues presented for review;
 2. A concise statement of the case briefly indicating the nature of the case, the course of proceedings, and the ruling presented for review;
 3. A statement of the facts relevant to the issues submitted for review;
 4. A summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;
 5. The argument, with citations to the authorities and parts of the record (if any) on which the appellant relies;
 6. For each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues); and
 7. A concise conclusory statement clarifying the relief being sought by appellant;
 8. Unless an appellant's brief is submitted pro se, it shall also include a table of authorities.
- b. Appellee's Brief. The appellee's brief must conform to the requirements of subsection 1-5-14.2(a), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:
 1. The statement of issues;
 2. The statement of the case;
 3. The statement of facts.
- c. Appellant's Reply Brief. The Appellant may file a single brief in reply to the appellee's brief. Unless the Supreme Court permits, no further briefs may be filed.

1-5-14.3 Cross Appeals

In cases involving a cross-appeal:

- a. The appellant must file a principal brief in the appeal. The brief must comply with the provisions of subsection 1-5-14.2(a).
- b. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. The appellee's brief must comply with subsection 1-5-14.2(a), except that the brief need not contain a statement of the case unless the appellee is dissatisfied with appellant's statement.
- c. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. The appellant's answer to the cross-appeal should not duplicate statements, arguments, or authorities contained in the appellant's principal brief. To avoid duplication, references may be made to the appropriate portions of the appellant's principal brief. The brief must comply with subsection 1-5-14.2(a) except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:
 1. The jurisdictional statement;
 2. The statement of the issues;
 3. The statement of the case; and
 4. The statement of the standard of review.
- d. The appellee may file a brief in reply to the response in the cross-appeal. The brief must comply with subsection 1-5-14.2(a) and must be limited to the issues presented by the cross-appeal. This brief is due within fourteen (14) days after service of the appellant's response to the cross-appeal.
- e. Unless the Supreme Court permits, no further briefs may be filed in a case involving a cross-appeal.

1-5-15 Motions

1-5-15.1 An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the Supreme Court permits otherwise.

1-5-15.2 Contents of a Motion

- a. Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.
- b. Accompanying documents.
 1. Any affidavit or other paper necessary to support a motion must be served and filed with the motion.
 2. An affidavit must contain only factual information, not legal argument.
- c. Documents Barred or Not Required
 1. A separate brief supporting or responding to a motion must not be filed.
 2. A notice of motion is not required.
 3. A proposed order is not required.

1-5-15.3 Response.

- a. Time to File. Any party may file a response to a motion; subsection 1-5-15.2 governs its contents. The response must be filed within ten (10) days after service of the motion unless the Supreme Court shortens or extends the time.
- b. A response may include a motion for affirmative relief. The time to respond to the new motion for affirmative relief, and to reply to that response, are governed by subsections 1-5-15.3(a) and 1-5-15.4. The title of the response must alert the court to the request for relief.

1-5-15.4 Reply to Response

Any reply to a response must be filed within seven (7) days after service of the response. A reply must not present matters that do not relate to the response.

1-5-16 Computing Time and Extending Time

1-5-16.1 Computing Time

To compute any time period specified in these rules:

- a. Exclude the day of the event that triggers the period;
- b. Count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- c. Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

1-5-16.2 Extending Time

For good cause, the court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires; however, the court may not extend the time to file a notice of appeal (except as authorized in subsection 1-5-5.2 or subsection 1-5-7.7) or a petition to appeal.

1-5-17 Amicus Curiae

1-5-17.1 When Permitted

In any appellate proceeding, an amicus curiae may file a brief only by request or leave of the Supreme Court or if the brief states that all parties have consented to its filing.

1-5-17.2 Motion for Leave to File

The motion must be accompanied by the proposed brief and state:

- a. The movant's interest; and
- b. The reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

1-5-17.3 Timing for Filing

An amicus curiae must file its brief, accompanied by a motion for leave to file when necessary, no later than seven (7) days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than seven (7) days after the appellant's or petitioner's principal brief is filed. The Supreme Court may grant leave for later filing, specifying the time within which an opposing party may answer.

1-5-18 Oral Argument

1-5-18.1 The Supreme Court shall decide all appeals upon the briefs, memoranda, and statements filed together with the record of the lower court, without oral arguments unless a party requests oral argument and shows the court that such is necessary and/or will aid the court in its decision. Nothing in these rules, however, shall preclude the court from ordering oral arguments on its own initiative.

1-5-18.2 When oral arguments are ordered, the Clerk of the Supreme Court shall notify the parties of the specific time, date, and place the arguments are to be heard. At the oral arguments, both appellant(s) and appellee(s) shall have a maximum of twenty (20) minutes to present their

respective arguments, unless additional time is allowed by the court for good cause shown. Appellant shall be permitted to both open and close the arguments.

1-5-19 Reconsideration

1-5-19.1 The Supreme Court shall entertain Motions for Reconsideration of any final order, decision, or opinion, issued by the Supreme Court, provided that the Motion for Reconsideration is made within twenty (20) days of issuance of the order, decision, or opinion.

1-5-19.2 A Motion for Reconsideration is an extraordinary remedy that can only be granted for compelling reasons. A motion for reconsideration may be presented on the following grounds and no other:

- a. That some fact, material to the decision, or some question or law decisive of the case
- b. was overlooked by the Court;
- c. the presence of new and material facts (e.g. juror misconduct, etc.) which were fraudulently withheld or could not have been reasonably known to the aggrieved party during the pendency of the appellate proceedings;
- d. That the decision is in direct conflict with the TAT Tribal Code, other Tribal ordinances or resolutions, controlling case law, applicable federal statutes, or fundamental principles of federal Indian law; or
- e. That the court employed inappropriate procedures, considered facts outside the record on appeal, or failed to issue an opinion in accordance with section 1-5-21.

1-5-19.3 The grounds for reconsideration must be pled with specificity and be supported by facts or law in the appellate record and supporting brief as stated in subsection 1-5-14.2(a).

1-5-19.4 A party opposing reconsideration may file a brief in opposition within ten (10) days of the receipt of the movant's motion and brief.

1-5-19.5 Oral argument on the issue of reconsideration is within the discretion of the court.

1-5-19.6 The Supreme Court may hear additional arguments and allow supplemental briefing, if necessary. Within thirty (30) days of receipt of the motion, the Supreme Court may grant or deny the motion for reconsideration and issue an opinion pursuant to section 1-5-21.

1-5-20 Frivolous Appeals

If the Supreme Court finds that a party has filed a frivolous appeal, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award the appellee his just damages plus single or double costs.

1-5-21 Scope of Review and Finality of Decision

1-5-21.1 Scope of Review – Civil Appeals

- a. Upon an appeal from a civil judgment or order, the Supreme Court may reverse, affirm, remand or modify the judgment or order (or any part thereof) as to any party.
- b. Upon an appeal from a judgment, the Supreme Court may review any intermediate order or ruling which involves the merits and affects the judgment appearing upon the record.
- c. The Supreme Court may order a new trial of the case in total, or of any particular issues within the case.

- d. If any relevant and material issue has not been fully tried and ruled on by the lower court, the Supreme Court may remand the case to the lower court for a determination of the issue or issues, without relinquishing jurisdiction of the appeal.

1-5-21.2 Scope of Review – Criminal Appeals

- a. Upon an appeal from a criminal judgment, ruling or order, the Supreme Court may reverse, affirm, or modify the judgment, ruling or order, and may do any of the following:
 - 1. Set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment, ruling, or order;
 - 2. Order a new trial; or
 - 3. Remand the case, with instructions.
- b. Upon an appeal from a criminal judgment, ruling or order, the Supreme Court may review any intermediate orders or rulings which involve the merits or which may have affected the judgment, ruling or order adversely to the appellant.

1-5-21.3 If a party files any motion with the lower court after a notice of appeal is filed, the party filing the motion must notify the clerk of the Supreme Court in writing, and the Supreme Court may grant or deny the motion, or, alternatively, remand the case to the lower court to decide the motion. The Supreme Court retains jurisdiction on remand unless it expressly dismisses the appeal.

1-5-21.4 Finality of Decisions

In most cases, the Supreme Court will deliver its opinion to the parties in the case within three (3) months of the date the last brief was submitted or within three (3) months on the last day of oral arguments; provided, however, that additional time may be taken by the Court to deliver its opinion should the complexities of the case or other issues warrant additional time be taken to ensure justice is served. Such determinations will be made on a case-by-case basis. All decisions of the Supreme Court shall be arrived at by a simple majority of the three justice panel. All judgments on appeal are final unless the court grants a motion for reconsideration under section 1-5-19.

1-5-22 Writ of Habeas Corpus

- 1-5-22.1 A prisoner in custody under sentence of the District or Juvenile Court shall have the right to submit an application for writ of habeas corpus to the Supreme Court, claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the Tribe or the United States, or that the lower court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack. The Supreme Court may vacate, set aside, or correct the sentence. To seek a habeas review, a person must file a petition for a writ of habeas corpus directed to the chief judge of the lower court, which shall be forwarded to the Supreme Court within 24 hours after filing for the purpose of determining if the current incarceration, commitment, or future custody of the petitioner is in violation of law, provided that the petitioner has exhausted available Tribal procedures. The petition shall state:
- a. The name and location of petitioner;
 - b. The name and address of the person having or who will have custody of petitioner;
 - c. Whether the petitioner is in custody pursuant to a judgment of the Fort Berthold District Court, as well as the name of the deciding judge;
 - d. The date of the judgment or conviction and the length of confinement;

- e. The nature of the case or the offenses involved and the plea entered;
 - f. All grounds on which petitioner is being held unlawfully and a summary of facts supporting each ground; and
 - g. The relief the petitioner is seeking.
- 1-5-22.2 Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the Tribal attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.
- 1-5-22.3 The Supreme Court may entertain and determine such application for writ of habeas corpus without requiring the production of the prisoner at the hearing.
- 1-5-22.4 In all proceedings brought under this section, and any subsequent proceedings on review, the counsel to indigent defendants may be appointed in accordance with established lower court procedures.
- 1-5-22.5 The petition shall be presented to and reviewed by the appellate chief justice to determine substantial compliance with the requirements of this rule.
- 1-5-22.6 If a petition does not substantially comply with the requirements of this rule it shall be returned to the petitioner with a statement of the reasons for its return.
- 1-5-22.7 If a petition does substantially comply with the requirements of this rule, the appellate chief justice or his/her designate shall order that a copy of the petition and order be served on the appellee and the appellee's representative. The appellee shall file an answer to the petitioner within the time provided for by the appellate court's order and shall respond to each allegation in the petition.
- 1-5-22.8 The Supreme Court justices assigned to the case shall determine whether adequate relief can be granted based upon the petition, answer, and exhibits or whether an evidentiary hearing is required. If an evidentiary hearing is required it shall be held within twenty (20) days of the filing of the writ. If an evidentiary hearing is not required, the Supreme Court shall dispose of the petition as justice requires but must render a decision and issue an opinion within thirty (30) days.
- 1-5-22.9 The Supreme Court must act upon an application for a writ of habeas corpus and render a decision within thirty (30) days of its filing.
- 1-5-23 Voluntary Dismissal
- 1-5-23.1 Stipulated Dismissal.
The Supreme Court must dismiss a docketed appeal if the parties file a signed dismissal agreement prior to oral arguments specifying how costs are to be paid and pay any court fees

that are due; provided that stipulated dismissal shall not be permitted after the Supreme Court has rendered a final decision.

1-5-23.2 Appellant's Motion to Dismiss.

An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court; provided that such dismissal shall not be permitted after the Supreme Court has rendered a final decision.

1-5-24 Tribal Notice and Right to Participate in Certain Appeals

1-5-24.1 If a party questions the Tribe's sovereignty, jurisdiction, or the constitutionality or validity of Tribal law in a proceeding in which the Tribe or an agency, officer, or employee of the Tribe is not a party in an official capacity, the questioning party must give written notice to the Clerk of the Supreme Court immediately upon the filing of the record or as soon as the question is raised in the Supreme Court. The clerk must then certify that fact to the Director of the Tribe's Legal Department within ten (10) days of receiving notice.

1-5-24.2 The Tribe shall have the unconditional right to participate in any appeal in which it receives notice or which it has the right to receive notice under this subsection 1-5-24.1.

- a. The Tribe may intervene as a matter of right at any time in any appeal to which the notice requirements of subsection 1-5-24.1 apply. Upon intervening under this subsection, the Tribe may assert any and all available claims and defenses and may present any and all admissible evidence relating to the challenge of its sovereignty, jurisdiction or the constitutionality or validity of any Tribal law, and is entitled to the same relief, including costs, as if the Tribes had instituted a separate action or proceeding, provided that the Tribes will not be required to pay costs of litigation in any action or proceeding in which it has intervened under this subsection.
- b. Upon timely motion or application, the Tribe may appear as amicus curiae in any action or proceeding to which the notice requirements of this section apply.
- c. Unless the Supreme Court orders otherwise, where timely and proper notice has been given under this subsection, the Tribe will notify the supreme court and parties in writing within sixty (60) days of receipt by the Tribe of such notice of any determination to participate in any action or proceeding by way of intervention or appearance as amicus curiae.

1-5-25 Attorneys

1-5-25.1 Eligibility

An attorney is eligible to practice before the Supreme Court if that attorney is of good moral and professional character and is licensed to practice before the Fort Berthold District Court.

1-6 Expungement of Criminal Records

1-6-1 Authority

The Chief Judge of the Fort Berthold District Court, or an associate Judge assigned by the Chief Judge in the event of a conflict of interest, shall be, upon petition, authorized to expunge the criminal record entered in the Fort Berthold District Court (hereinafter in this Chapter "Court") of a member of the Tribe under the conditions set out herein.

1-6-2 Procedure

1-6-2.1 An individual seeking expungement shall petition the Court for expungement. The petition shall be verified under oath and shall identify the conviction sought to be expunged, the date of

conviction and the reason for the request for expungement. The petition shall also verify that the individual has not been convicted in any court of a like offense either prior to the date of conviction of the offense sought to be expunged or after the date of conviction of the offense sought to be expunged.

- 1-6-2.2 An individual is limited to a one-time petition and expungement of a Tribal criminal record.
- 1-6-2.3 The conviction of the offense sought to be expunged must have been entered on the record of the Court at least seven (7) years prior to the date of the petition.
- 1-6-2.4 Exceptions to expungement shall be for felony offenses.
- 1-6-2.5 An individual is not entitled to expungement if the individual has had a like offense either prior to or after the conviction of the offense sought to be expunged.
- 1-6-2.6 Subject to the limitations set out in this Section, a decision to expunge a criminal record is at the discretion of the Judge considering the petition who shall consider the following factors when deciding a petition for expungement:
 - a. The seriousness of the offense and the facts surrounding the offense.
 - b. Whether or not the petitioner was represented by legal counsel during the criminal proceeding that resulted in the conviction.
 - c. The length of time elapsed since the date of conviction.
 - d. The petitioner's prior criminal history, if any.
 - e. Evidence of rehabilitation of the petitioner.
 - f. The reasons for the petitioner's request.
- 1-6-2.7 A decision to grant a petition for expungement shall be entered as a judgment by order of the Court.
- 1-6-2.8 Upon entry of the Judgment, the criminal record thereby expunged shall be thereafter forever sealed.
- 1-7 **Reserved**