Title II – Civil Rules

2-1 Rules of Civil Procedure

2-1-1 Action

These rules shall govern the procedure in all suits civil in nature, and shall be construed to secure the prompt determination of every action. The Federal Rules of Civil Procedure shall be used for matters not specifically addressed herein and where not in conflict with these rules.

2-1-2 Commencement of Actions

A civil suit is commenced by filing a complaint with the clerk of court, in person or by way of certified mail, and a summons endorsed by the clerk. A filing fee will be required.

2-1-2.1 Statute of Limitation

All civil actions shall be commenced within six (6) years from the time the cause of action accrued in the case of contracts and within three (3) years in the case of torts, unless otherwise provided differently within the Tribal Code.

2-1-2.2 Waiver of Limitation

A defense of the running of the statute of limitation can be waived by the party able to assert such a defense.

2-1-3 Summons

The summons must issue with the complaint and state that an answer is due within thirty (30) days after service, and the summons must state that if no answer or defense is raised within thirty (30) days a default can be granted for the relief demanded in the complaint.

2-1-4 Complaint

The complaint shall be filed in conjunction with the summons with the Clerk of Court. The action shall be deemed to have started as of the time the complaint is so filed and stamped. The complaint shall be captioned, "In the Fort Berthold District Court" and shall state the name of the plaintiff and defendant or petitioner and respondent.

2-1-5 Service

2-1-5.1 Proof of service of the summons and complaint must be made by the server's affidavit of service, the server must be eighteen years of age or older and not interested in the action.

2-1-5.2 The summons and complaint must be personally served upon the defendant, when the defendant is an individual, either in person or at defendant's place of residence. If service is achieved at the defendant's place of residence, personal service can be achieved by leaving it with a resident over the age of 18 who resides at the residence.

2-1-5.3 Service upon a corporation, partnership, or association shall be achieved by personal service of the summons and complaint on an officer, director, managing or general agent, partner or associate, or to an agent authorized by appointment or by law to receive service of process on its behalf.

2-1-5.4 Service upon the Tribe, the Tribal Business Council, Tribal agency, Tribal entity, or Tribal officer or Tribal employee named in their official role must be achieved by way of personal service of the summons and complaint delivered to a Legal Department staff member in the Legal Department's main office on the Fort Berthold Reservation during regular business hours.

In addition, when a Tribal agency or entity is a named party, service must also be achieved by way of personal service of the summons and complaint delivered to a managing head of such agency or entity.

2-1-5.5 With the exception of service upon those listed under subsection 2-1-5.4, if personal service cannot be achieved for the summons and complaint, service may be made by way of certified mail-return receipt requested upon showing to the Court of an affidavit of non-service, stating that after diligent inquiry, with facts showing diligence, personal service cannot be achieved on the defendant. The certified mailing must be addressed, when the defendant is an individual, to that individual at the individual's last known mailing address. When the defendant is a corporation, partnership, or association, the certified mailing must be addressed to one of those individuals listed at subsection 2-1-5.3 at the individual's last known address.

2-1-5.6 With the exception of service upon those listed under subsection 2-1-5.4, if service cannot be achieved personally or by way of certified mail, the Court may grant service by way of publication accompanied with an affidavit of non-service, stating that after diligent inquiry, with facts showing diligence, service cannot be achieved personally or by way of certified mail on the defendant.

2-1-5.7 Any pleadings, motions, or filings after the summons and complaint shall be made upon the party or the party's attorney, by way of mail accompanied with a certificate of service. Filings after the summons and complaint may be made with the clerk of court either in person, by mail, or electronic mail to the designated Court email address.

2-1-6 Computing Time

In computing time, the day that triggers the event shall be excluded and the last day shall be counted, including intermediate Saturdays, Sundays, and Tribal or federal observed holidays. However, if the last day falls on a Saturday, Sunday, or Tribal or federal observed holiday, the immediate following working day shall be the last day. When the time period prescribed is fourteen (14) days or less, Saturdays, Sundays, and holidays are excluded in counting the days.

2-1-6.1 Motion to Extend Time

A party may request by motion additional time to respond upon showing of good cause.

2-1-7 Assignment of Case Number and Judge

Upon receipt of the summons and complaint, the clerk of court shall assign a case number to the matter along with an Assignment of Judge to preside over the matter. Notice of Case Number and Judge shall be provided to all parties within fourteen (14) days upon commencement of the action.

2-1-8 Pleadings

Pleadings are any documents made to the Court in which parties are presenting a claim or contention to the Court. A claim for relief should set out the jurisdictional basis and short factual basis and relief requested. The pleadings must be signed by a party or attorney with a full address and phone number.

2-1-9 Motions

In all actions, any requests made to the Court must be by way of a motion. Motions must be in writing and served upon the opposing party or attorney, if the party is represented. Responses to motions must be filed within fourteen (14) days after being served. A reply to response to

motions must be filed within seven (7) days after response of motion is served. The Court shall issue an order to the pending motion in a timely manner not to exceed ninety (90) days from final submissions by the parties.

2-1-10 Defenses

A defendant or respondent must file an answer or response within thirty (30) days of service of the complaint. Defenses may include lack of jurisdiction, improper service and failure to state a claim for relief. A motion to dismiss for failure to state a claim upon which relief can be granted may be treated as a motion for summary judgment.

2-1-11 Third Party Practice

A defendant may move to file as a third party plaintiff against a party who may be liable to him on plaintiff's claim. When a counterclaim is asserted against a plaintiff, he may add a third party upon court approval.

2-1-12 Amended Pleadings

A party may amend his pleading once at any time within 30 days of service of the complaint, or by leave of court. Amended pleadings relate back to the date of the original pleadings. Leave to amend shall be liberally granted.

2-1-13 Pre-Trial Conference

The court shall order a pre-trial conference for scheduling, to narrow the issues, and handle any pending procedural or evidentiary motions within ninety (90) days from date of commencement of action.

2-1-14 Parties

An action shall name the real party in interest or other person authorized by Tribal Law. The capacity of an individual or corporation to sue or be sued shall be determined by Tribal law. Minors or incompetent persons must be represented by a guardian or other representative. On matters of joinder, class action and intervention, the Federal Rules of Civil Procedure will be used as a guide.

2-1-15 Default

If a party fails to answer or otherwise enter an appearance and defend after thirty (30) days from date of service of the summons, judgment will be entered upon a motion for default. A motion for default must be sent by certified mail to the last known address of a party, or to the attorney on record. A hearing on damages can be held when the damages requested are not for a sum certain.

2-1-16 Discovery

Discovery may be conducted by available means, and such discovery requests need not be filed with the court except in support of a motion to compel discovery. Discovery and the refusal to make discovery will be guided by the Federal Rules of Civil Procedure.

2-1-17 Jury Trial

A jury trial is available when a claim exceeds five thousand dollars ($5,000). Unless otherwise provided by law and these rules, all other actions shall be tried by judge, alone. A party must request a jury trial, in writing, within ten (10) days after the service of the last pleading, either a complaint or answer, or the request for a jury trial is deemed waived.

2-1-18 Judgment

An order intended as a final order, disposing of all matters in the pleadings of a case, is a judgment, even if not formally labeled as a judgment. An order shall be issued by the Court in a timely manner not to exceed ninety (90) days from the date of hearing.

Upon the filing of a motion for summary judgment, the response to the motion shall be filed within fourteen (14) days after service of the motion. A reply to the response shall be filed within seven (7) days after service of the response. A hearing on the motion for summary judgment shall be held within forty-five (45) days from the filing of the motion for summary judgment.

A party will have twenty (20) days from the date of the judgment to file a motion for reconsideration, with a supporting brief. The response to the motion for reconsideration shall be filed within fourteen (14) days upon service of the motion. A reply to the response shall be filed within seven (7) days after service of the response. If a timely motion for consideration has been filed, the time for appeal will not run until the motion for reconsideration is denied. After a final order of judgment is entered, the clerk shall mail a copy to the last known address of the parties or their attorney of record.

2-1-19 Enforcement of Judgment

A writ of execution to enforce a money judgment may be issued at the request of the judgment creditor. The writ shall direct the Tribal law enforcement or other person to seize the property and conduct a judicial sale if necessary. A stay of writ of execution can be granted provided a bond is posted in an amount that will cover the damages anticipated to occur as a result of the stay and all other costs and expenses, unless waived. Disputed funds subject to the execution can be ordered held in escrow until resolution of the dispute. All funds designated for the exclusive use by Tribal governmental departments, program and/or agencies shall be specifically exempt from any writ of execution or judgment.

In addition, the Court can order, by motion of the parties or the Court, a debtor to execute a wage assignment upon a showing of for cause. A debtor is entitled to exemptions and can keep certain property and personal goods that cannot be seized or ordered. Any exceptions will be determined by personal needs and other applicable Tribal law. Court ordered wage assignments and/or the legal remedy of garnishment of wages shall be specifically limited to child support, federal financial aid and all fines and fees levied by the court pursuant to Tribal law.

2-1-20 Injunctions

The Court may issue a temporary restraining order or preliminary injunction in divorces and other civil cases upon a showing of irreparable harm. If such an order is issued *ex parte*, a hearing must be held within ten (10) days of the date the *ex parte* order was issued. A hearing on a preliminary injunction or temporary restraining order will be advanced on the calendar and may be combined with the trial on the merits. A motion for temporary restraining order or preliminary injunction must be supported by affidavit or other evidence and set forth the reasons why harm, loss or irreparable injury will occur.

2-1-21 Writs

The Court will consider actions or writs such as mandamus, prohibition, habeas corpus, quo warranto, and action to exclude a person from the reservation. The action must be commenced by a complaint or petition and state the basis for relief. If emergency relief is sought a separate motion should be so labeled and filed.

2-1-22 Habeas Corpus

A writ of habeas corpus may be considered by the court at any time, and shall be filed in such form as the court may by separate rules prescribe. Failure to file a writ of habeas corpus in the prescribed form shall not be cause for denial of the writ, but may cause delay in the consideration of the writ if the information provided is insufficient.

2-1-23 Appeals

Appeals from a final order or judgment or other appealable order will be decided by the MHA Nation Supreme Court.

2-2 Repossession Procedure

2-2-1 Prescribed Procedures Generally

2-2-1.1 Procedures

The personal property of any Indian shall not be taken from within the exterior boundaries of the Fort Berthold Reservation under procedures of repossession, except in strict compliance with the following prescribed alternative procedures:

a. Written consent to repossess such property from within the exterior boundaries of the Reservation shall be secured by the creditor from the Indian purchaser at the time the repossession is sought. Such written consent shall be retained by the creditor and submitted to the Fort Berthold District Court upon proper demand.
b. In the absence of such written consent, repossession shall be lawfully perfected by the creditor only by obtaining an order authorizing and directing such repossession issued by the Fort Berthold District Court in an appropriate legal proceeding.

2-2-2 Violations and Penalties

2-2-2.1 Exclusion from Reservation

Any person, except persons authorized by federal law to be present within the exterior boundaries of the Reservation, found by the Fort Berthold District Court to be in willful violation of Section 2-2-1 herein, may be excluded from the Fort Berthold Reservation, pursuant to the authority vested in the Tribal Business Council of the Three Affiliated Tribes under Article VI, Section 3 of the Tribal Constitution.

2-2-2.2 Denial of Privilege To Do Business

Any business, found by the Fort Berthold District Court to be in willful violation of Section 2-2-1 herein, may be denied the privilege of doing business within the exterior boundaries of the Fort Berthold Reservation, pursuant to the authority vested in the Tribal Business Council of the Three Affiliated Tribes under Article VI, Section 3 of the Tribal Constitution.

2-2-3 Civil Liability

2-2-3.1 Breach of Peace – Civil Liability

Any person who violates Section 2-2-1 herein, and any business whose employee violates such section, shall be deemed to have breached the peace of the lands within the exterior boundaries of the Fort Berthold Reservation, and shall be civilly liable to the purchaser of the personal property at issue for any and all losses actually incurred as a result of the failure to comply with the procedure prescribed in Section 2-2-1.

2-2-3.2 Maximum Amount Subject to Repossession

If the personal property unlawfully repossessed is considered to be consumer goods (i.e., goods used or bought for use primarily for personal, family, or household purposes), the purchaser

shall have the right to recover, in any event a maximum amount of either fifteen percent (15%) of the principal amount of the debt or two thousand dollars ($2,000), whichever is greater.

2-2-4 Rules of Procedure

2-2-4.1 Commencement of Action

A civil action for repossession of personal property shall be commenced upon filing with the clerk of the Fort Berthold District Court, New Town, North Dakota, the duly executed original copies of a summons and complaint, together with the requisite filing fee in the amount to be determined by the Chief Judge. A standard form summons and complaint may be secured upon request from the clerk of court or, in the alternative, the plaintiff may draft the summons and complaint without reference to such forms.

2-2-4.2 The complaint must state a full cause of action and must set forth the following allegations.

a. That the plaintiff is the legal title owner of the personal property and/or that the plaintiff has a lawful lien against the personal property.
b. That the defendant is in default with respect to his or her contractual obligation(s) to the plaintiff.
c. That the plaintiff is lawfully entitled to immediate possession of the personal property.
d. That the plaintiff is entitled to recover from the defendant that certain outstanding balance on the note, retail installment contract, security agreement, or other instrument at issue.

In addition, the complaint must (1) set forth a sufficient description of the personal property so that it can be readily identified and (2) be supported by all relevant documentation attached thereto as exhibits.

2-2-4.3 Service of Complaint

The plaintiff shall cause copies of the summons and complaint to be served on the defendant personally, by certified mail, or as otherwise permitted by Tribal law.

2-2-4.4 Service and Filing of Answer

The defendant shall have a period of thirty (30) days from the date of service of the summons and complaint thereon in which to file with the clerk of court and serve on the plaintiff a written response or answer to the complaint.

2-2-4.5 Temporary Restraining Order

The plaintiff may file along with the complaint a motion for temporary restraining order, if the plaintiff believes that the personal property at issue will be damaged, removed from the jurisdiction of the Court, or otherwise jeopardized before a hearing on the issue of repossession can be held. Any such order issued will direct that the property be immediately seized and maintained in a secure location pending hearing on the issue of repossession. The order may be granted without notice to the defendant only if:

a. it clearly appears from specific facts shown by affidavit that immediate and irreparable harm (e.g., damage to or removal of the property) will result to the plaintiff before the defendant can be heard; and
b. the plaintiff certifies to the Court in writing the efforts, if any, which have been made to give notice and the reasons supporting the claim that notice should not be required.

No such order shall issue except upon the giving of security by the plaintiff, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by the defendant, if found to have been wrongfully subject to the order. In addition to the

temporary restraining order, the Court shall issue an order to show cause on the issue of repossession of the property subject to the restraining order. If the temporary restraining order was granted without prior notice to the defendant, the show cause hearing shall be set at the earliest practicable time and no later than seven (7) days, without prejudicing the ability of the defendant to adequately prepare for such hearing.

2-2-4.6 Order to Show Cause

If circumstances do not warrant the filing of a motion for temporary restraining order, but the plaintiff desires a hearing on the issue of repossession preliminary to a full, final hearing on the complaint, the plaintiff may file with the Court a motion for an order to show cause on the repossession issue. Upon such filing, the Court shall issue an order to show cause, wherein shall be identified a date for a hearing on the repossession issue. The hearing shall be set by the Court for a date no fewer than seven (7) days and no more than twenty-one (21) days from the date of service of the order to show cause on the defendant. The plaintiff shall be notified in writing of the date, time, and place of the hearing in a timely manner.

The plaintiff must allege and show that substantial harm will result to the plaintiff should possession of the personal property at issue not be secured prior to the final hearing on the complaint.

The plaintiff shall personally appear at the show cause hearing for the purpose of proving that it is legally entitled to immediate possession of the personal property. The defendant may personally appear at the hearing for the purpose of showing cause as to why the plaintiff is not legally entitled to such possession. Should the Court, based on a consideration of the evidence presented at the hearing, determine that the plaintiff is legally entitled to immediate possession of the personal property, it shall issue an order directing the defendant (or the entity maintaining the property under a temporary restraining order) to forthwith release the personal property to the plaintiff. Upon request made by the plaintiff, the Court shall additionally order that a law enforcement officer assist the plaintiff in securing possession of the personal property from the defendant. After having secured possession of the personal property, the plaintiff shall maintain possession of and safeguard the property pending final disposition on the complaint by the Court. The defendant may personally appear at the final hearing for the purpose of presenting evidence in opposition to the claim(s) in whole or in part. Should the plaintiff's complaint, in addition to seeking repossession of the personal property, pray for relief in the form of a monetary judgment and should the Court, based on a consideration of the evidence presented at the hearing, determine that the plaintiff has proved the claim thereto in whole or in part, the Court shall issue an order identifying the appropriate monetary sum adjusted to be due and owing to the plaintiff by the defendant.

2-3 Small Claims Court

2-3-1 Procedure

2-3-1.1 Scope

The Small Claims Division is to provide a simple and inexpensive forum for claims of debt less than $5,000.00, exclusive of costs. A plaintiff may reduce a larger claim and waive the balance but may not divide the claim. A person who elects to use the small claims court waives the option to file in regular civil court. The cases will be decided by a magistrate or judge.

2-3-1.2 Types of Claims

Only open account, regular credit account, utility, rent or other consumer debt actions will be allowed. No vehicle or other repossessions of personal property by business creditors will be

heard; no forfeiture or eviction actions will be heard. However, repossession actions by private parties for property of less than $5,000 will be heard.

2-3-1.3 No Attorneys

Each party will represent themselves pro se. A business or corporation may appear in small claims court only by a person, not an attorney. A party who wants to utilize an attorney may file a motion for removal to District Court. The motion for removal must be filed within thirty (30) days after service of the complaint.

2-3-1.4 Complaint

The plaintiff shall complete a required complaint form to include the complete address of the parties and shall state that a defendant has thirty (30) days to answer. The complaint must state the basis and include any exhibits such as receipts or ledgers. Service of the complaint shall be achieved by the plaintiff.

2-3-1.5 Answer

A party has thirty (30) days to file an answer which shall be in writing and set out any defenses. It may include any set-off or counterclaim. The defendant shall mail a copy of the answer to the opposing party by way of mail, with a certificate of service, and file the original with the court. A party may voluntarily enter into a time payment agreement and file it with the clerk.

2-3-1.6 Default

If a party fails to answer or otherwise defend, the court shall grant a default judgment against a party, and can award costs (filing fee, service costs).

2-3-1.7 Subpoena

The court may issue subpoenas to require witnesses to appear. The costs of service of the subpoenas shall be paid by the party requesting it, or a party can hire an independent third-party to serve it. The clerk has no duty to make service for a party.

2-3-1.8 Witnesses and Evidence

Witnesses shall be sworn and the court shall conduct the hearing in such order and form as it deems just. No discovery shall be taken by the parties except by leave of court.

2-3-1.9 Orders

After default or hearing, a written order of judgment shall be made and given or mailed to the parties. Costs are allowed to a winning party. If a suit or defense is determined to be frivolous or made in bad faith, the court may award extra costs to a party. The parties shall notify the court when a judgment is satisfied or paid. No punitive damages will be awarded.

2-3-1.10 Judgment Execution

The clerk shall mail or give a copy of the order to the parties. The court may order the funds be paid all at once, or in time payments. The court may issue execution or other process to enforce the judgment. The court may order a party to execute a wage assignment. In any contempt hearing on an order to show cause, a person shall not be jailed or held in contempt if they are indigent or poor. The court may vacate a judgment for up to six months for good cause shown.

2-3-1.11 Appeals

Within ten (10) days of notice of an order or judgment, a party may file a discretionary appeal to the District Court. The District Court will review the order and decide if it has merit or not.

If the appeal has merit the Court will conduct any necessary proceeding and issue a written order. There shall be no appeal from the decision of the District Court.

2-3-1.12 Removal to District Court

A party may request removal to the District Court within thirty (30) days after service on the defendant. The motion for removal will be filed in the small claims case. The presiding magistrate or judge shall issue a written order granting the request.

2-3-1.13 Reserved

2-4 Tribal Notice and Right to Participate in Certain Actions

2-4-1 Findings and Purpose

The Tribal Business Council of the Three Affiliated Tribes has a compelling interest in protecting the Three Affiliated Tribes' sovereignty and jurisdiction and the validity of Tribal laws whenever the Tribes' authority is challenged in an action in the Courts of the Three Affiliated Tribes. Tribal sovereignty and jurisdiction or the validity of Tribal law may be challenged in cases in the Fort Berthold District Court in which the Tribe or any agency, officer, or employee thereof is not a party. With adequate, timely, and uniform notice of cases in the Fort Berthold District Court that challenge Tribal sovereignty and jurisdiction or the validity of Tribal law, the Tribes can effectively assess whether and how to participate in such cases.

The purpose of this Chapter is to provide the Three Affiliated Tribes with adequate, timely, and uniform notice of any and all cases brought before the Fort Berthold District Court that challenge Tribal sovereignty and jurisdiction or the validity of any Tribal law and in which the Tribes or any agency, officer, or employee thereof is not a party and to grant the Tribes the right to participate in such cases by way of intervention or as amicus curiae.

2-4-2 Notice Requirement

In any action or proceeding in the Fort Berthold District Court which the Tribes or any agency, officer, or employee thereof is not a party but which challenges the Tribes' sovereignty and/or jurisdiction or the validity of any Tribal law, the presiding Judge shall order notice of the action or proceeding to be provided to the Tribes within fourteen (14) days upon notice of the case assignment and judge. The District Court shall also serve all parties to the action with a copy of the order of notice given.

2-4-3 Manner and Timing of Notice

Notice required under this Chapter shall be given in writing and simultaneously with any challenge to the Tribes' sovereignty and/or jurisdiction or the validity of any Tribal law. The Notice shall identify the action or proceeding and shall include a brief written explanation of the grounds upon which the Tribes' sovereignty, jurisdiction, or the validity of Tribal law being challenged.

2-4-4 Tribes' Right to Participate in Action

The Three Affiliated Tribes shall have the unconditional right to participate in any case in which it receives notice or which it has the right to receive notice under this Chapter as follows:

a. The Tribes may intervene as a matter of right at any time in any action or proceeding to which the notice requirements of this Chapter apply. Upon intervening under this Section, the Tribes 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 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 Chapter. Intervention under this Chapter does not abridge, limit, or otherwise affect the right of the Tribes to commence, maintain, defend, or otherwise intervene in actions or proceedings in the District Court.

b. Upon timely motion or application, the Tribes may appear as amicus curiae (friend of the court) in any action or proceeding to which the notice requirements of this chapter apply.
c. The Tribes may timely determine that it is in the best interest of the Tribes not to intervene, appear as amicus curiae, or otherwise participate in an action or proceeding in the District Court to which the notice requirements of this Chapter apply.
d. Unless the District Court orders otherwise, where timely and proper notice has been given under this Chapter, the Tribes will notify the District Court and parties in writing within sixty (60) days of receipt by the Tribes of such notice of any determination to participate in any action or proceeding by way of intervention or appearance as amicus curiae.
e. Notwithstanding the notice requirements of this Chapter, the Tribes shall have the right to intervene or appear as amicus curiae in any case pending before the District Court prior to the adoption of this Chapter for which it would have had the right to notice under this Chapter.

2-4-5 Failure to Give Notice

The failure of the District Court to give notice as required by this Chapter shall not deprive the District Court of jurisdiction and is not a waiver or modification of any rights otherwise timely asserted by any party. Any notice given under this Code is not a substitute for, or a waiver or a modification of, any other pleading requirement under Tribal law.

2-4-6 Late Notice

If the District Court discovers that notice to the Tribes under this Chapter should have been but has not been given, the District Court will promptly give notice in writing to the Tribes as required by this Chapter. The District Court may stay the action or proceeding at any stage to allow compliance with this Chapter. If final judgment has already been entered, the Tribes may motion or apply for rehearing as of right and the District Court shall entertain promptly any such motions or applications for rehearing by the Tribes, and in disposing of such motions the District Court, for good cause shown, may vacate a judgment or any portion thereof.

2-4-7 Sovereign Immunity and Jurisdiction Unaffected

Nothing in this Chapter shall be deemed or construed to deprive, limit, or extend the jurisdiction of the District Court.

Notice required under this Chapter does not authorize a party to name the Tribes or any agencies, officers, or employees thereof as a party to any action or proceeding. Nothing in this chapter shall be deemed or construed as a waiver or limitation of the sovereign immunity from suit of the Tribes, its agencies, officers, or employees.

Legislative History: Resolution No. 10-067-VJB; Resolution No. 09-042-VJB; Resolution No. 06-126-NH

2-5 Civil Exclusion and Removal

2-5-1 Declaration of Policy

The Tribal Business Council of the Three Affiliated Tribes finds that certain types of conduct by persons within the Reservation endanger the health, safety, and welfare of the Tribes and may threaten the political integrity and the economic security of the Tribes. As a sovereign nation, the Tribes have the inherent power to exclude persons from the Fort Berthold Reservation, limited by certain provisions within the Tribes' Constitution and by various acts of Congress. The purpose of the Civil Exclusion and Removal Ordinance (or, in this Chapter, "Ordinance") is to protect the integrity and security of the Tribes as a whole, enrolled Tribal members, and the community.

2-5-2 Authority

This Ordinance is adopted pursuant to Articles I, III, and VI of the Constitution and By-laws of the Three Affiliated Tribes of the Fort Berthold Reservation.

2-5-3 Jurisdiction

The provisions of this Ordinance shall apply to all persons and property within the territorial jurisdiction of the Tribes to the fullest extent authorized by federal law.

2-5-4 Definitions

Where a term is not defined in this section, it shall be given its ordinary meaning, unless otherwise defined in this Ordinance. Terms used in this section shall have the following meaning, except where the context indicates otherwise;

a. "Enrolled Tribal Members" means a person who is enrolled as a member of the Three Affiliated Tribes;
b. "Habitual Offender" means a person who commits three or more same or similar offenses;
c. "Non-member" means a person who is not enrolled as a member of the Three Affiliated Tribes;
d. "Person" means any individual, firm, corporation, public or private entity;
e. "Public Right-of-Way" means any lawful right-of-way within the exterior boundaries of the Reservation that is open to public access in a matter of law;
f. "Reservation" means the Fort Berthold Reservation;
g. "Tribal Prosecutor" shall mean the person responsible for presentation of evidence of behalf of the Tribe at hearings on exclusion before District Court.

2-5-5 Application.

2-5-5.1 Pursuant to the provision of the Ordinance, any individual may be temporarily or permanently excluded and removed from all or any portion of the Reservation, except property owned by the individual and public right-of-way.

2-5-6 Authority of the Fort Berthold District Court

The Fort Berthold District Court is hereby authorized to adjudicate exclusion hearings, as provided herein, and to enforce all provisions of this Ordinance. Nothing herein shall be construed to limit the authority of the District Court to issue an Order of Exclusion under other existing provisions of Tribal law.

2-5-7 Grounds for Exclusion

Any person may be excluded and removed from the Reservation for the commission of one (1) or more of the following acts within the Reservation:

a. Conviction of a felony drug-related offense;
b. Conviction of a felony offense of violence;

c. Conviction for engaging in gang activity as defined in subsection 3-19-17.1(a) of the Tribal Code which threatens the safety and security of residents of the Reservation;
d. Conviction of a felony sexual offense;
e. Being a habitual offender whose behavior threatens the health, safety, and welfare of any person within the Reservation;
f. Repeated failure to obey an order of the District Court.

2-5-8 Procedures for Exclusion

2-5-8.1 Application

Any individual eighteen years or older may file an application for exclusion of an individual based upon the grounds enumerated in Section 2-5-7 of this Chapter. The application shall be accompanied by supporting affidavits by two or more individuals. The affidavit must allege facts that would establish that the proposed individual meets the criteria for exclusion and set forth the reason or reasons for the proposed exclusion. The individual submitting the affidavit must have actual personal knowledge for the grounds for exclusion under Section 2-5-7 of this Chapter.

The individual filing the application for exclusion shall agree to testify and cooperate with the Tribal Prosecutor throughout the proceeding and may be subject to cross-examination.

2-5-8.2 Review by Tribal Prosecutor

The application for exclusion shall be filed with the Tribal Prosecutor for review. The Tribal Prosecutor shall review the application and affidavit to determine whether they allege sufficient facts establishing that the individual meets the criteria for their exclusion. If the Tribal Prosecutor determines that the application and affidavit allege sufficient facts establishing that the individual meets the criteria for their exclusion, the Tribal Prosecutor shall file as a Complaint. If the Tribal Prosecutor determines that the application and affidavit does not allege sufficient facts to establish that the individual meets the criteria for their exclusion, the Tribal Prosecutor shall deny the application and so notify the applicant.

2-5-8.3 Complaint

The Tribal Prosecutor shall file a complaint for exclusion with the Fort Berthold District Court. A complaint for exclusion shall provide a detailed statement of the grounds for exclusion along with supporting affidavit. A copy of the Complaint and Summons shall be served upon the respondent and the applicant in accordance with Section 2-1-5 of this Title.

2-5-8.4 Exclusion Hearing

After notice to the person named in the complaint, the Fort Berthold District Court shall hold a hearing after thirty (30) days but not to exceed sixty (60) days of the notice to decide whether the person shall be excluded from the Reservation:

a. In accordance with the Civil Rules of Procedure as set forth in Title II, Chapter 1;
b. The Tribal Prosecutor shall be given an opportunity to present testimony, including and witnesses or other evidence, in support of the complaint;
c. The respondent shall be given an opportunity to present his/her defense at the hearing and may be represented by counsel at his/her own expense;
d. The District Court may, in its discretion, grant a continuance of the hearing or request by either the Tribal Prosecutor or the respondent, or upon its own motion;
e. After the hearing, or at the time set for the hearing if the respondent does not appear, the District Court, upon finding of just cause, may order that respondent be temporarily or permanently excluded from the Reservation, or may permit the respondent to remain upon the Reservation on such conditions as the District Court sees fit to impose.

f. In lieu of exclusion, the District Court may impose the following remedies, which may include, but shall not be limited to:
    i. Payment of restitution and/or damages to any individual or to the Tribe; and/or
    ii. Payment of a civil penalty and/or performance of community service. The civil penalty levied shall be for the purpose of compensating for injury to the Tribe, an individual, or the Tribal community, including defraying the costs of enforcing the provisions of this Ordinance.

2-5-8.5 Term of Exclusion Order

An Order of Exclusion shall remain in force until revoked by the Fort Berthold District Court unless the Order specifically provides otherwise.

2-5-8.6 Exclusion and Removal

If any person ordered excluded from the Reservation by the Fort Berthold District Court does not promptly obey the Order of Exclusion, any Tribal law enforcement officer shall:

a. Remove the respondent and any of his property from the Reservation at the respondent's expense;
b. Prevent the re-entry of the respondent onto the Reservation;
c. Execute the Order of Exclusion and shall use only so much force as is necessary to effect the removal or prevent the re-entry; and
d. The Tribal Prosecutor of the District Court may also refer the matter to the United State Attorney for prosecution of any federal crime committed.

2-5-8.7 Emergency Exclusion and Removal

a. In cases involving immediate danger to the health, safety, welfare, life, or property of the Tribe or any enrolled tribal member, and where delay is likely to result in irreparable damage, the Fort Berthold District Court may, upon its own initiative or upon request by the Tribal Prosecutor, issue and Emergency Writ of Exclusion.
b. Notwithstanding anything in this Ordinance to the contrary, in cases involving non-members who are known drug dealers, or non-members with a warrant(s) out for their arrest in another jurisdiction, the Tribal Business Council shall have the power to issue an Emergency Writ of Exclusion without notice of Exclusion without notice and without a hearing; provided, that the person excluded may petition the Tribal Council to have a Writ of Exclusion dissolved, which the Tribal Business Council may grant or deny in it discretion. In cases where there is an outstanding warrant(s), the Emergency Writ may order the delivery of the person to the appropriate authorities.
c. An Emergency Writ of Exclusion shall order any tribal law enforcement officer to remove the non-member and any of his/her property from the Reservation:
    i. The law enforcement officer executing the Emergency Wit of Exclusion shall use only so much force as is necessary to effect the removal.
    ii. If the service of the notice has not already been made on the person, the District Court or Tribal Business Council shall cause the law enforcement officer to serve the notice upon the non-member at the time of removal or as soon after the removal as possible. An Emergency Writ of Exclusion issued under subsection (i) shall remain in force until the hearing provided for in Section 2-5-7.3 has been held.

2-5-9 Appeal of Exclusion Order

An Order of Exclusion by the Fort Berthold District Court shall be final. Any person excluded by an order of the District Court may appeal to the District Court to have the order modified or vacated at such time as the order provides, or if the order makes no such provision, after one

year. Final orders may be appealed to the MHA Nation Supreme Court pursuant to the Rules of Appellate Procedure, provided an Order of Exclusion shall not be stayed pending appeal.

(As amended at Section 2A-1-70(f) by Resolution No. 13-001-VJB on January 24, 2013)

2-5-10 Criminal Penalties

Any individual that knowingly violates an order of exclusion issued pursuant to this Chapter shall be deemed guilty of contempt of an order of exclusion and shall be subjected to a fine not to exceed $5,000 and jail term not to exceed one (1) year.

2-5-11 Civil Penalties

Any person that knowingly violates an order of exclusion issued pursuant to this Chapter commits a civil infraction punishable by a fine not to exceed $500. The trial of any such infraction shall be by the court without a jury, and the prosecution shall have the burden of proving the alleged infraction by a preponderance of the evidence. There shall be no appeal from a judgment involving such infraction.

2-5-12 Severability

If any provision of this Ordinance or its application is held to be invalid, the remainder of the Ordinance or the application of the provision to other persons, or circumstances, is not affected.

2-5-13 Immunity

A law enforcement officer may not be held criminally or civilly liable in carrying out the provision of the ordinance, provided the officer acts reasonably in good faith.

2-5-14 Sovereign Immunity

Nothing in this Ordinance shall be construed as a waiver of sovereign immunity from suit of the Tribe, its officers, business, or entities unless expressly waived. A waiver of immunity will not be implied and must be specifically stated as to its terms and conditions.

2-5-15 Effective Date

The provision of this Ordinance relating to exclusion shall be effective upon the date of resolution approving and adopting the same by the Fort Berthold Tribal Business Council.

Legislative History: Resolution No. 13-001-VJB; Resolution No. 11-057-VJB

2-6 Contempt of Court

2-6-1 Grounds for Contempt

A judge may sanction a person for contempt for conduct that is disorderly, insolent behavior, disrupting proceedings, violent acts, or other disregard of the law and decorum of court proceedings. Other grounds include disobedience to court orders, refusing to be sworn or answer as a witness, or interfering with court personnel or other persons.

2-6-2 Constructive Contempt

When a contempt is committed in the presence of the judge, a summary sanction can issue or be reserved until a proceeding is completed. The judge must make an order reciting the facts and state the reasons the sanction is imposed, including removal from the Court building, monetary fines, and imprisonment, if necessary.

2-6-3 Implied Contempt

In a civil case when a contempt is committed outside of the presence of the judge, an order to show cause will be issued and a hearing set within thirty (30) days upon the filing of the motion for show cause. If sanctions are imposed, the contemnor shall be given an opportunity to purge herself/himself of the contempt order by a payment of an obligation or doing a required act. The judge must make an order reciting the facts and state the reasons the sanction is imposed, including removal from the Court building, monetary fines, and imprisonment, if necessary.