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 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
[NEW RULES TO BE ADDED ONCE ENACTED AFTER PUBLIC COMMENT]

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