

CHAPTER 1-8 COUNCIL'S CODE OF PROFESSIONAL RESPONSIBILITY

1-8-1 Title

This Chapter shall be known as the Council's Code of Professional Responsibility.

1-8-2 Legislative Intent

The Colville Business Council as the governing body of the Confederated Tribes of the Colville Reservation and having the authority authorized by the Constitution under Article IV, Section 2 may remove from office a Councilmember. Furthermore, the Business Council is recognized by the Constitution, Article II, Section 7, as the "sole judge of the qualifications of its members."

The Colville Business Council may exercise its power to expel any Member of the Council for neglect of duty or gross misconduct; to declare vacant the Council position of a Councilmember found guilty of a felony or misdemeanor involving dishonesty in any Indian, State or Federal Court; and to rule on the constitutional validity of a recall petition to recall a Councilmember for having violated his oath of office, or for having committed an act or acts of malfeasance, or an act or acts of misfeasance while in office. The removal and qualifications provisions of the Constitution shall be implemented into the Colville Tribal Law and Order Code and given substance by this Chapter.

(Amended 03/04/2021, Resolution 2021-130)
(Certified 03/05/2021)

1-8-3 Definitions

(a) "Closely related" means spouses, parents, grandparents, children, grandchildren, or siblings.

(b) "Complaint" means an ethics complaint filed pursuant to this Chapter.

(c) "Council" means the Colville Business Council, the governing body of the Confederated Tribes of the Colville Indian Reservation.

(d) "Councilmember" or "Member of Council" means a current member of the Colville Business Council as established by the Tribal Constitution and By-Laws.

(e) "Ethics Panel" means the four people empaneled to hear a specific Complaint.

(f) "Expulsion" means the act of expelling a Councilmember from office for the remainder of that term and from being a candidate in future elections.

(g) "Hearsay" means a statement made by someone outside of an ethics Complaint proceeding who is not currently testifying or submitting a sworn statement with respect to a Complaint.

(h) "Subject(s) of a Complaint" mean the Member(s) of Council against whom a particular Complaint is lodged.

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1-8-4 Overview of the Complaint Process

Once a Complaint has been filed, a panel of four Councilmembers, drawn as evenly as possible from the different districts, will be created to handle the preliminary review of the Complaint. If the Ethics Panel determines that the Complaint may have merit, they will refer it to an evidentiary hearing in which any Members of Council without conflicts of interest may participate and vote. If those Councilmembers determine that the Subject(s) of the Complaint have violated this Chapter, they will then vote on an appropriate disciplinary action. This recommendation will then go before the full Council at a Special Session for a vote.

Councilmember

1-8-5 Affidavit To Be Filed By Members

Each Councilmember shall within thirty days after his or her appointment sign, under oath, and file an affidavit with the Office of Reservation Attorney agreeing he or she will perform his or her duties as

required in this Chapter and will not disclose confidential information acquired as a result of any proceedings under this Chapter, except as provided herein.

1-8-6 Jurisdiction of Ethics Panel

The jurisdiction of any Ethics Panel empaneled by this Chapter shall be strictly limited to the consideration of the conduct of Members of Council.

1-8-7 Powers, Duties and Functions of Ethics Panel

The Ethics Panel shall have the following powers, duties and functions:

(a) Investigate possible violations of this Chapter by Councilmember(s) and report to full Business Council the results of any investigation of violations, as provided in this Chapter;

(b) Make recommendations to the Business Council of any actions deemed appropriate by the Ethics Panel resulting from its investigations;

(c) To contract for investigative and prosecutorial services, and any other service deemed necessary by the Ethics Panel to carry out the responsibilities of this Chapter; provided that those services are within the approved budget for Ethics Panels and that all such contracts have been routed through the contract review process.

1-8-10 through 1-8-19 RESERVED

COUNCILMEMBERS RESPONSIBILITY – STANDARDS

1-8-20 Business Council Code of Professional Responsibility

In order to maintain Council integrity and secure the public interest the Council hereby adopts a Code of Professional Responsibility for Councilmembers. While Councilmembers should act at all times with integrity and for the best interests of the Tribes, this Code establishes minimum standards of conduct for all Councilmembers. In particular, no Councilmember may commit neglect of duty or gross misconduct while in office. Gross misconduct is defined as:

(a) Actions which destroy independence of judgment as a Council Member. A Councilmember shall not:

(1) Use his or her position to obtain financial gain or anything of substantial value for the private benefit of himself or herself or anyone closely related to himself or herself, or for an organization with which he or she is associated;

(2) Misappropriate tribal funds or property, however, in the case of incidental overpayment or misuse of tribal funds, it shall not be deemed a violation of this Chapter if the Councilmember promptly pays back the difference on his or her own initiative (e.g. before any Complaints or threats of Complaints under this Chapter, or investigation by other authorities);

(3) Vote on or influence legislation in Committee session or Council session, where the Councilmember has a personal or family interest which is in conflict with the proper discharge of Council duties;

(4) Accept any gratuity or compensation for services rendered in connection with Council employment other than Council salary, except for traditional gifts earned in connection with a Councilmember's work, such as blankets or traditional jewelry;

(5) Ask for, receive or agree to receive anything of value upon any understanding that the Councilmember's vote, opinion, judgment, or action will be influenced thereby;

(6) Solicit, receive, or accept a gift, favor, or service under circumstances where it could be reasonably inferred that such action would influence the Councilmember in the discharge of Council duties, or was a reward for taking particular action;

- (7) Accept any remuneration other than Council compensation for Council advice or assistance; or
- (8) Appear before any department or program of tribal government for compensation that is contingent upon action by that department or program of tribal government.

(b) Actions which involve undue influence upon any tribal agency, court, or governmental department. A Councilmember shall not:

- (1) Represent clients for compensation in proceedings or hearings before tribal agencies, boards, Tribal Court, Administrative Law Judge, or Commissions involving claims of tribal employees or any other person;
- (2) Represent any claimant for compensation in any claim placed before the Business Council;
- (3) Receive compensation for an appearance before a tribal agency, board, Commission, Tribal Court, Administrative Law Judge, or department as an expert witness;
- (4) Testify before any tribal agency, board, Commission, Tribal Court, Administrative Law Judge or department as to the intent of Council in enacting any law or ordinance without prior consent of the Council as set out by Special Resolution; or
- (5) Singularly or through others attempt to improperly influence a tribal agency, board, commission, Tribal Court, Administrative Law Judge, tribal corporation or business, tribal department, or any other individuals or groups. "Improperly influence" means to use a Councilmember's position as Councilmember as part of an implied or explicit threat to coerce a target to commit an unlawful act or an act not required by law (including Council resolutions or directives) or to refrain from taking a lawful action.

(c) Actions which constitute an abuse of official position or destroy public trust in Council or its Members. A Councilmember shall not:

- (1) Accept employment, or engage in any business, or be involved in any activity, which one might reasonably expect would require the disclosure of privileged information gained by virtue of holding Council office.
- (2) Enter into any contract with a tribal agency, tribal board, tribal commission, Tribal Court, Administrative Law Judge, tribal corporation or business, or tribal department involving services or property, unless the contract is made after full disclosure to the Colville Business Council for public notice and competitive bidding; except in cases where public notice and competitive bidding are not required. The Business Council shall be fully informed of the contract and the contract or agreement shall be filed with the Tribal Government Committee;
- (3) Commit an improper or illegal act, or commit a legal act in an improper or illegal manner, in connection with the Councilmember's responsibilities or duties to the Tribes;
- (4) Commit perjury in any proceeding before a tribal commission, Tribal Court, Administrative Law Judge, or proceeding under this Chapter, or commit any crime involving dishonesty;
- (5) File a frivolous complaint under this Chapter;
- (6) Disclose confidential information belonging to the Tribes without the approval of the Business Council, including disclosing a Complaint under this Chapter to the Subject(s) of the Complaint in violation of the Chapter;
- (7) Retaliate against any employee or member of the Tribes for any complaints filed pursuant to this Chapter. Bad faith complaints should be handled through the disciplinary process in the Tribes' employee policy manual or through the provisions of this Chapter regarding frivolous complaints; or

(8) Willfully lie to the public. This provision is to be construed narrowly, and only includes statements that are objectively false at the time they are said, such as a Councilmember's voting record, and does not include opinion statements or campaign promises that are eventually not delivered upon.

(d) Actions which constitute a violation of Tribal Constitutional provisions. A Councilmember shall not:

(1) Permanently leave the Reservation, or be found guilty of a felony or misdemeanor involving dishonesty in any Indian, State or Federal Court while in office; or

(2) Violate any provision prescribing standards of conduct for a Councilmember contained in the Constitution and By-Laws of the Tribes or this Chapter while in office.

(e) Actions which violate any resolutions or other rules of conduct governing the conduct of Councilmembers.

1-8-21 Council Sole Judge of its Members

(a) As stated in the Tribal Constitution: "The Business Council of the Confederated Tribes of the Colville Reservation shall be the sole judge of the qualifications of its members." As a result, the Business Council must ultimately make the determination of whether particular conduct violates the foregoing Code of Professional Responsibility, regardless of the recommendations of any investigators, attorneys, or other consultants utilized pursuant to this Chapter.

(b) As judging the qualifications of Councilmembers is solely reserved to the Council, this Chapter does not create any rights enforceable in any court with respect to membership on the Business Council or whether the procedures or requirements of this Chapter were properly followed. Rights to compensation or reimbursement that inure to the Tribes as a result of this Chapter or its processes are enforceable in Tribal Court or any other court of competent jurisdiction.

1-8-22 through 1-8-29 RESERVED

COMPLAINTS—HOW FILED AND PROCESSED

1-8-30 Filing of Complaints

(a) A complaint may be filed by a Councilmember, an employee of the Tribes, any person doing business with the Tribes or its entities, or an enrolled tribal member. Complaints must be written and directed to the Chair of the Tribal Government Committee, except as provided in subsection (i). The person who actually signs and files the complaint is known as the "Complainant."

(b) Complaints may not be made with respect to conduct that took place before a Councilmember assumed office. However, Complaints may reference such conduct to explain or provide additional detail regarding the conduct that is the basis of the Complaint.

(c) A complaint shall include:

- (1) all relevant facts that the Complainant knows about the situation;
- (2) a list of witnesses that have relevant information relating to the Complaint;
- (3) if there are any facts in the Complaint that the Complainant did not personally witness first-hand, the complaint should include witness statements, signed under oath in a form substantially similar to the forms at the end of this Chapter, from first-hand witnesses; and
- (4) any documentation or other evidence relevant to the Complaint, and a description of the nature and location of any additional relevant documentation that the Complainant cannot obtain directly.

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(d) A Complaint must clearly indicate which portions are based on first-hand knowledge of the Complainant or witnesses whose signed statements are included with the Complaint, and which portions are based on hearsay. If a Complaint is based at all on hearsay, the Complainant, by signing the complaint,

verifies that they have taken reasonable steps to verify the truth of any hearsay statements and have a good-faith belief that the statements are true.

(e) Complaints should not be based on conduct that the Complainant knows or should have known was the subject of a prior ethics complaint against the Subject(s) of the Complaint.

(f) The complaint must include a signed statement saying: “Under penalty of perjury, this Complaint is true and accurate to the best of my knowledge, I have taken reasonable, good-faith efforts to acquire witness statements and confirm the truth and accuracy of all statements herein, and to my knowledge the allegations of this Complaint have not been the subject of any prior ethics complaints against the Subject(s) of my Complaint.”

(g) If a bond is required pursuant to 1-8-43, it shall be included in the initial complaint.

(h) Forms for submitting a Complaint and witness statements are included at the end of this Chapter. A Complaint does not have to be filed using these forms, as long as it meets the other requirements, but use of the forms is preferred.

(i) In most cases, the Complaint must be filed with the Chair of the Tribal Government Committee. However, if the Chair of the Tribal Government Committee is the Subject of the Complaint, the Complaint may instead be filed with one of the following, in order of priority:

- (i) 1st Vice-Chair of the Tribal Government Committee;
- (ii) 2nd Vice-Chair of the Tribal Government Committee;
- (iii) Vice-Chairman of the Business Council;
- (iv) Secretary of the Business Council;
- (v) Any other Member of Council.

The Complaint must be filed with the first person on the list above that is not named as a Subject of the Complaint, regardless of real or perceived conflicts of interest. If a Councilmember receives a Complaint that they should not have received (i.e., that Member was not highest in the order listed above) the Councilmember shall forward the complaint to the Member that should have received it.

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(j) Complaints should be filed as soon as possible, but in no event later than one month after the Complainant becomes aware of the relevant conduct or occurrence.

1-8-31 **Empaneling the Ethics Panel**

(a) A new Ethics Panel shall be empaneled for each Complaint that is filed.

(b) Once a Complaint has been received, the Councilmember who received the Complaint will forward the Complaint to all Councilmembers that are not the Subject(s) of the Complaint. Each of the districts will select a representative to sit on the Ethics Panel for that Complaint. Provided, unless the Chair of the Tribal Government Committee must recuse themselves as provided in 1-8-31(d), the Chair of the Tribal Government Committee will be the Ethics Panel representative for their district.

(c) A Councilmember may not serve on the Ethics Panel, and must recuse themselves from selection of the district representative, if the Member is or is closely related to the Subject of the Complaint or the Complainant, or otherwise cannot judge the complaint fairly for any reason. If all of the Councilmembers from a particular district must recuse themselves, an alternate will be appointed by the Chair of the Ethics Panel selected in 1-8-31(d). Alternate members should be appointed in a way that creates as close to equal representation for each district as possible.

(d) The Chair of the Tribal Government Committee will be the Chair of the Ethics Panel, unless they had to recuse themselves as provided in 1-8-31(c), in which case the members of the Ethics Panel shall select a Chair.

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(e) Once four members have been selected who are not required to recuse themselves as provided in subsection (c), those members will constitute the Ethics Panel, and the Chair will be the Chair, for the remainder of the processing of that Complaint.

(f) If any member of an established Ethics Panel leaves Council or is otherwise unable to perform the duties described in this Chapter, that member will be removed from the Ethics Panel. An alternate member will be appointed by the Chair for each member that is removed from the Ethics Panel. Alternate members should be appointed in a way that creates as close to equal representation for each district as possible.

1-8-32 Initial Review of Complaints

(a) The Ethics Panel will make an initial determination on the Complaint.

(b) First, the Ethics Panel will decide whether there are potential criminal charges stemming from the Complaint. If a majority of the Ethics Panel believes that there are potential criminal implications, the Complaint will be forwarded to Tribal Police and the Tribal Prosecutor for initial review and investigation. If the complaint is so forwarded:

- (i) The Ethics Panel will stop any work or deliberation on the Complaint pending the results of the criminal investigation;
- (ii) The Complainant will be notified that the matter has been referred to Tribal Police and the Complaint process is halted pending the criminal investigation;
- (iii) Tribal Police will provide an update no less than weekly on the progress of their investigation.

At the conclusion of the investigation, Tribal Police will provide the results of their investigation to the Ethics Panel for review. If the alleged conduct occurred off the reservation, the Ethics Panel may vote to refer the Complaint to another appropriate criminal enforcement body instead of the Tribal Police.

After receiving the results of the investigation, the Ethics Panel may vote to suspend consideration of the Complaint pending the results of any criminal prosecution, if it appears that criminal prosecution is forthcoming and that suspending consideration would best serve the interests of justice and the Tribes. If consideration is suspended, notice will be provided to the Complainant of this decision. The Complaint process will resume automatically at the conclusion of the criminal prosecution, and the Chair of the Ethics Panel should act to obtain and distributed to the Panel any witness transcripts from any criminal trial.

In the event that the investigation or prosecution is not completed within a reasonable time, the Ethics Panel may vote to restart any work or deliberations on the Complaint. If the Ethics Panel determines that it needs to restart the process due to an extended investigation or prosecution, they will notify the Complainant in writing within business 3 days.

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(c) The Ethics Panel will then decide whether the Complaint is actionable, nonactionable, incomplete, or frivolous.

- (i) A Complaint is actionable if it sets forth sufficient facts, with sufficient clarity, which could support a finding of unethical conduct, and no element required by section 1-8-30 is missing from the complaint.
- (ii) A Complaint is nonactionable if the facts it alleges are not a violation of this Chapter, or if the alleged conduct is so *de minimis* that any further investigation or action is not warranted.
- (iii) A Complaint is incomplete if it is missing one of the elements required by section 1-8-30, or if it is sufficiently confusing or unclear such that a proper determination cannot be made. After a Complaint has been deemed incomplete and the Complainant has had a chance to correct the omissions, if the Complaint is found incomplete a second time it will be dismissed as incomplete.
- (iv) A Complaint is frivolous if it is made for the purposes of harassment, or otherwise not made in good faith. A Complaint is not frivolous if it is based on a genuine belief that events occurred which violated this Chapter.

(d) In order to be classified as frivolous, three of the members of the Ethics Panel must vote that the Complaint is frivolous. If a majority vote that the Complaint is actionable, then it will be deemed actionable. If fewer than three members vote that a Complaint is frivolous, those votes will be counted as

votes for nonactionable. If, after applying the previous rule, no determination has a majority vote, then the Complaint will be deemed incomplete if at least one person voted for incomplete, otherwise it will be deemed nonactionable.

(e) If the complaint is deemed incomplete, a notice will be sent to the Complainant with specific references to the elements of the Complaint that were incomplete, and/or the portions that were sufficiently unclear that a determination could not be made. The notice will include a copy of the Complaint. The Complainant will have 10 business days from receipt of this notice to file an amended Complaint, or the Complaint will be deemed incomplete and dismissed, in which case any bond filed with the complaint will be returned.

(f) If the Complaint is deemed nonactionable, a notice will be sent to the Complainant with a brief explanation of the reasons for the decision, and the matter will be dismissed. If any bond was filed with the Complaint, the bond will be returned.

(g) If the Complaint is deemed frivolous, a notice will be sent to the Complainant with a brief explanation of the reasons for the decision, and the matter will be dismissed. If any bond was filed with the Complaint, the bond will not be returned to the Complainant.

(h) If the Complaint is deemed actionable, the Ethics Panel will decide whether to contract for an independent investigation, as provided in 1-8-33, or to proceed directly to an evidentiary hearing, as provided in 1-8-34. Notice will be sent to the Complainant stating the decision of the Committee.

(i) The Ethics Panel should make its initial determination within 10 business days of the Ethics Panel composition being finalized, the receipt of an amended Complaint, or the results of a criminal investigation or prosecution, whichever is later.

1-8-33

Independent Investigation

(a) If the Ethics Panel determines that an initial, independent investigation of the facts and law regarding the complaint would be helpful for the evidentiary hearing, the Committee may contract with an outside investigator to perform such investigation.

(b) Prior to any such contract beginning, a copy of the Complaint will be provided to the Subject(s) of the Complaint. If the Subject(s) of the Complaint admit the factual allegations of the Complaint, an investigation will not be conducted under this section, and the Complaint will move to an evidentiary hearing.

(b) Conversations between the investigator and witnesses are confidential and should be audio recorded by the investigator. The investigator will prepare a report comparing the facts as they see them with the standards of conduct set forth in this Chapter, and recommending specific action by the Ethics Panel and Council. The report and audio recordings will be sent to the four members of the Ethics Panel.

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(d) In rare cases, and in his or her discretion, the Chair of the Ethics Panel may call another vote after the investigative report has been distributed. The Chair should only call this vote if the Chair believes that the results of the investigative report strongly support a finding of frivolous or nonactionable, and that having the witnesses testify further would not be necessary or helpful. All members must vote as to whether the Complaint is actionable, nonactionable, or frivolous. If three members vote that the Complaint is frivolous, it will be deemed frivolous. If a majority votes for actionable, the Complaint will be deemed actionable, otherwise it will be deemed nonactionable unless it is deemed frivolous.

(i) If the Complaint is deemed actionable, it proceeds to an evidentiary hearing.

(ii) If the Complaint is deemed nonactionable it is dismissed with no further action.

(iii) If the Complaint is deemed frivolous, the Chair of the Ethics Panel may, in the Chair's sole discretion, assess a fine against the Complainant not greater than the actual costs of the independent investigation.

(e) Any investigation done pursuant to this section should be completed within 60 calendar days.

1-8-34

Evidentiary Hearing Conduct

(a) The Chair of the Ethics Panel shall set a date for an evidentiary hearing that is between 15 and 30 business days from the date that any independent investigation is concluded or that the Ethics Panel votes to move forward with an evidentiary hearing, whichever is later. Notice will be sent to the Subject(s) of the Complaint, along with a copy of the Complaint and the results of any independent, non-police investigation. This notice must be received at least 15 business days before the hearing. If notice is not received 15 days prior to the hearing, the hearing must be rescheduled to a date at least 15 days after the notice was received, and 10 days from the date of the rescheduling.

(c) The Chair of the Ethics Panel will assemble a list of subpoenas of witnesses and documents for the hearing to send on behalf of the Ethics Panel. If the Subject(s) of the Complaint wish to request any subpoenas for witnesses or documents, they must send a list of requested subpoenas to the Chair of the Ethics Panel at least 10 business days before the hearing, and the Chair will forward the subpoenas to the Office of the Reservation Attorney (“ORA”) for drafting and mailing unless the subpoenas are patently unreasonable. The Chair will send all subpoenas to the ORA for drafting as soon as possible, but in no event fewer than 8 business days before the hearing. The ORA will then draft and send out the subpoenas at least 6 business days before the hearing. Any investigation report(s) by any police department or independent investigators will be sent to all Members of Council at least 5 business days before the hearing, and copies of any audio recordings created during an independent investigation will be available to Members of Council at least 5 business days before the hearing. Any such reports or recordings will remain confidential.

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(d) An evidentiary hearing on a Complaint is open to all Members of the Colville Business Council, although all Members who are the Subject(s) of the Complaint or the Complainant, are closely related to the Subject(s) of the Complaint or Complainant, or otherwise do not feel that they can judge the Complaint fairly should recuse themselves from participation and voting except as provided below. Evidentiary hearings will otherwise be closed, confidential meetings, and the only non-Councilmembers allowed in the room are the witnesses actively testifying and an attorney representing Council as a whole to assist with procedural issues. Witnesses who are not actively testifying should wait in the lobby until they are called to testify. The evidentiary hearing will be recorded using the recording technology generally used for meetings of the Business Council, but the recording will be confidential.

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(d) It shall be considered a neglect of duty if a Councilmember could have attended the evidentiary hearing where an ethics matter is to be considered, but fails to do so. Any Councilmember who cannot otherwise attend a Special Session for an ethics matter may appear telephonically.

(e) The Chair of the Ethics Panel will run the meeting, take the lead in questioning witnesses, and control the questioning of witnesses. Witnesses should be sworn in before testimony begins. The Chair shall permit others to ask questions as long as they are relevant and not harassing or repetitive. This process should normally proceed as:

- (i) asking general questions about the events that occurred that the witness has knowledge about;
- (ii) asking the witness to confirm specific facts or statements from any police or independent investigative report; and
- (iii) asking the witness to confirm the authenticity of any documents that were allegedly created, prepared, or reviewed by the witness.

(f) The Subject(s) of the complaint must be given a chance to question the witness, but the Chair should maintain control and ensure that the questioning does not become overly hostile. The Subject(s) of the Complaint can ask questions:

- (i) to clarify any points made by the witness;
- (ii) to highlight any inconsistencies between witnesses’ statements;
- (iii) to highlight internal inconsistencies in a witnesses’ testimony (or inconsistencies with any investigative reports); or

(iv) to highlight any specific biases that the witness might have against the Subject(s) of the Complaint, although this questioning should not become a general attack on the witness' character.

The Chair of the Ethics Panel must ensure that witnesses are treated respectfully, but must also ensure that the Subjects of Complaints receive due process and are able to defend themselves.

(g) Witnesses should only testify to matters about which they have personal knowledge. The Chair should exclude any hearsay testimony or evidence except in cases where a better witness is not available, or where the hearsay statements were allegedly made by the Subject(s) of the Complaint.

(h) The Subject(s) of the Complaint are permitted to testify on their own behalf. They will be given time to testify about the events from their perspective, and then the other Councilmembers will be given the opportunity to ask questions. Once again, the Chair of the Ethics Panel should take the lead in questioning and permit other questions only as long as they are not harassing or repetitive. The Subject(s) of the Complaint must also be given the opportunity to make a brief (no more than five minutes) closing statement before the vote is taken as provided in 1-8-35.

1-8-35

Evidentiary Hearing Recommendation – Special Session Vote – Suspension Procedures

(a) At the conclusion of the evidentiary hearing, all present Councilmembers who are not the Subject(s) of the Complaint or otherwise recused as provided in 1-8-34(c) must vote for one of the following:

- (i) Dismiss the Complaint – if the evidence presented does not show that it is more likely than not that a violation of this Chapter has occurred;
- (ii) Recommend disciplinary action – if the evidence presented shows that it is more likely than not that a violation of this Chapter has occurred; or
- (iii) Find the complaint frivolous – if the evidence presented shows that the complaint was brought for the purposes of harassment or otherwise not in good faith. A complaint is not frivolous if it is based on a genuine belief that events occurred which violated this Chapter. If at least 2/3rds of the voting Councilmembers find the complaint frivolous after an independent investigation has been conducted, the Ethics Panel Chair, in their sole discretion, may include a fine against the Complainant equal to the actual costs of the independent investigation. If a majority of voting Members vote that it is frivolous, but the 2/3rds threshold is not met the Complaint is deemed frivolous and dismissed with no further action by Council.

If a majority of the voting Members vote for dismissal, or if none of the options has a majority of the votes, then the Complaint will be dismissed with no further action by Council.

(b) If the voting Councilmembers vote to recommend disciplinary action, a second vote will be taken to determine the recommended disciplinary action. The options are censure (i.e. public reprimand), a one-month suspension, or expulsion. The different levels of discipline should be used as follows:

- (i) Censure – if the conduct violated this Chapter but was relatively minor, not a recurring offense, and does not indicate that the Subject(s) of the Complaint are unable to perform their duties or protect the public trust;
- (ii) Suspension – if the conduct violated this Chapter and was either a minor, but recurring offense or a moderately serious offense, but the conduct does not indicate that the Councilmember(s) are unable to perform their duties or protect the public trust; and
- (iii) Expulsion – if the conduct violated this Chapter and was a serious offense, or a repeated offense, indicating that the Councilmember(s) are unable to responsibly fulfill their duties to the Tribes or protect the public trust.

If none of the options has a majority vote, the recommendation will be deemed to be suspension if a majority of voting Councilmembers voted for suspension or expulsion, otherwise the recommendation will be deemed to be censure.

(c) In addition to the actions listed above, by a third majority vote, the voting Councilmembers may impose a fine of \$1,000.00, as well as restitution. Restitution includes any costs spent investigating the Complaint pursuant to 1-8-33, but only if the subject(s) of the Complaint denied the factual allegations of the Complaint as provided in 1-8-33(b) and did not have a good-faith basis for doing so. Restitution also includes any other direct losses to the Tribes, including, but not limited to, the value of stolen property and the loss of use of any misappropriated property.

(d) If the voting Councilmembers vote to recommend a disciplinary action, the recommendation shall be reported out at an open, non-executive Special Session of the Colville Business Council. Provided, however, that all Councilmembers shall be provided a copy of the findings of fact and recommendation at least 10 business days prior to said Special Session of the Colville Business Council. Normal Special Session procedures will be followed, unless the recommendation was expulsion, in which case the procedures of 1-8-36 will apply.

(e) It shall be considered a neglect of duty if a Councilmember could have attended the Special Session where an ethics matter is to be considered, but fails to do so. Any Councilmember who can not otherwise attend a Special Session for an ethics matter may appear telephonically.

(e) If a recommendation for suspension is passed by the Council at Special Session, Chairman of the Business Council will schedule the start date for the suspension after consulting with the suspended Councilmember(s) to minimize harm to the Tribes' interests resulting from the suspension. The start date for the suspension should be no later than one month after the Special Session vote approving suspension. The suspension is unpaid.

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1-8-36 Constitutional Provisions—Removal From Office

(a) No provision of this Chapter is intended to abridge, replace, modify, amend, or repeal any provisions of Article IV of the Constitution and By-Laws of the Tribes or any other provision of the Tribal Constitution and By-Laws. Any penalties, process, or procedures provided in Article IV shall, in the event of conflict, take precedence over any provisions of this Chapter and shall be exclusive and final.

(b) The following procedures will be utilized any Special Session in which the Council is voting on a recommendation to expel a Councilmember:

(1) Every Councilmember present shall have the right to vote, without regard to potential or real conflicts.

(2) Every Councilmember present except the Chairman of the Business Council shall either vote yes or no on the matter. The Chair shall vote in the event of a tie. A "tie" for the purposes of this section shall mean a situation where the Chair's vote could change the outcome of the vote (e.g. the Chair must vote if there is a 7-6 tie in favor of expulsion, because the Chair's vote could change the outcome).

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(3) Abstentions on a vote regarding expulsion shall not be allowed, and if made, shall be considered a neglect of duty.

1-8-37 Subpoena Enforcement

In the case of any failure to obey a subpoena, the Committee may request the aid of the Colville Tribal Court. The Court shall, in case of refusal to obey a subpoena issued to an individual by the Ethics Panel, issue an order requiring such person to appear at an evidentiary hearing, to produce documentary evidence, and/or to give evidence, and any failure to obey such order may be punished by the Court as a contempt. Every person or entity subject to the jurisdiction of the Tribes shall furnish to the Ethics Panel any item or person's testimony designated as being necessary for the exercise of its functions, powers, and duties, except for items or testimony reflecting information that is privileged or would be exempt from subpoena requirements in Tribal Court.

1-8-38 Investigative Suspension

(a) In special cases, the Subject(s) of a Complaint may be placed on investigative suspension. Investigative suspension should only be used when:

- (1) The Subject(s) of the Complaint are credibly accused of ongoing misappropriation of tribal property that is likely to continue without an investigative suspension;
- (2) The Subject(s) of the Complaint or their associates have made threats of violence towards tribal employees or Councilmembers; or
- (3) There is evidence that the Subject(s) of the Complaint are misusing their position to improperly influence anyone with respect to the Complaint process, outside of the methods of participation discussed in this Chapter.

(b) The Chair of the Ethics Panel may call a vote at any time to place the Subject(s) of a Complaint on investigative suspension. If a majority of the Ethics Panel votes to place the Subject(s) on investigative suspension, the vote is forwarded to the Chairman of the Business Council and if the Chairman agrees with the decision, the Subject(s) will be placed on investigative suspension.

(c) At the next Special or Regular Session, the Chairman of the Business Council shall put the investigative suspension to a vote.

- (1) If a majority of the present Members who do not have to recuse themselves for a reason listed in 1-8-34(c) vote in favor of suspension, the investigative suspension shall last until the end of the Complaint process, or until the Chairman of the Business Council brings the issue to a vote at a future Regular or Special Session and a majority of present, not recused, Councilmembers vote to end the suspension.

(Amended 03/04/2021, Resolution 2021-130)
(Certified 03/05/2021)

- (2) Otherwise, the investigative suspension ends.

(d) Any Councilmembers suspended pursuant to this section shall receive regular compensation.

1-8-39 Continuing Jurisdiction

(a) Except in case of the death of the Subject(s) of the Complaint, the removal of the Subject(s) from Council will not end an ongoing Complaint process. The Subject(s) of the Complaint will still be allowed to participate as normal in the process, although only current Members of Council will be able to vote during the process.

(b) If the Subject(s) of a Complaint dies during the Complaint process, the Complaint will be dismissed with respect to that person. Any claims for restitution that the Tribes may have shall be referred to the Office of Reservation Attorney or Tribal Prosecutor as appropriate. This dismissal does not prejudice the Tribes' right to restitution of misappropriated funds or other property.

(c) A Complaint may not be initiated against any person who is not currently serving on Council. Any claims for restitution that the Tribes may have shall be referred to the Office of Reservation Attorney or Tribal Prosecutor as appropriate.

1-8-40 Role of the Office of Reservation Attorney

(a) Any questions by Councilmembers to ORA related to this Chapter or the Complaint process that are not specifically related to an active complaint, should be in writing, and any responses should be sent to the entire Council. In the event the questions relate to an active complaint, a response will be in writing and should be sent to all Councilmembers except for those that are the subject of the complaint.

(Amended 03/04/2021, Resolution 2021-130)
(Certified 03/05/2021)

(b) If requested by the Councilmember running the meeting, ORA can attend meetings of the Ethics Panel and any evidentiary hearings, but their role should be limited to ensuring that procedures are clear and are followed, and members of ORA should not take an active role in questioning witnesses or making opening

or closing statements. This function can also be performed by outside attorneys contracted by an Ethics Panel.

- (b) As described in the Tribal Code provisions governing ORA, the client of ORA is the Tribes as a whole, represented by the Members of the Business Council, not the Councilmembers themselves. As a result, there is no conflict of interest or violation of attorney-client privilege for members of ORA to provide testimony or general assistance as described in this section to an Ethics Panel or Council as a whole, unless related to matters for which an individual Councilmember had received personal representation from that member of ORA when the Colville Business Council has assigned ORA to be the personal representative by Resolution, pursuant to Chapter 1-4 of this Code.

(Amended 03/04/2021, Resolution 2021-130)
(Certified 03/05/2021)

- (d) Upon the request of the Chair of the Ethics Panel, ORA can assist in drafting the public notices described in 1-8-41, and other notices required by this Chapter.

1-8-41

Public Notice

(a) In order to increase transparency, public notices shall be published throughout the Complaint process in the Tribal Tribune. The content of the public notice will depend on the action taken at each step. In any public notices under this Chapter, no confidential or sensitive information regarding witnesses should be disclosed, to protect witnesses from retaliation.

(b) After the preliminary determination described in 1-8-32, and after any vote called under 1-8-33, notice should be published that includes the composition and decision of the Ethics Panel, as well as:

- (1) If the Complaint is deemed nonactionable – A short description of the charges, and a statement that the alleged charges did not violate this Chapter, were not sufficiently supported by evidence, or both.
- (2) If the Complaint is deemed frivolous – A short statement that a Complaint was filed in bad faith against one or more Councilmembers, without a description of the alleged acts.
- (3) If the Complaint is deemed actionable – A short description of the charges, a statement of whether the Complaint has been referred to an investigator, and the phrase “The Ethics Panel’s determination means that the alleged facts could potentially violate the Council Code of Professional Responsibility. This finding does not mean or imply that the facts alleged are true, or that a violation has definitely occurred.”

However, if a Complaint is dismissed for being incomplete, no public notice is necessary.

(c) After the evidentiary hearing described in 1-8-34 and 1-8-35, a notice shall be published that includes the participating and voting Members who attended, their decision or recommendation, and:

- (1) If the Complaint is dismissed – A description of the charges, a statement generally describing the kinds of witnesses and documents that were presented, and a statement that (i) the facts were not found to merit disciplinary action, (ii) the evidence did not sufficiently support the alleged facts, or (iii) both.
- (2) If the Complaint is deemed frivolous – A short statement that a Complaint was filed in bad faith against one or more Councilmembers, without a description of the charges.
- (3) If disciplinary action is recommended – A description of the charges, a statement generally describing the kinds of witnesses and documents that were presented, and a statement of which Code of Professional Responsibility provisions that were found to be violated.

(d) After the Special Session vote described in 1-8-35 and 1-8-36, notice shall be published of the action taken by the Business Council which includes the participating and voting Members that were present and a description of the charges.

(e) Except as provided in this section, the content of any Ethics Panel meetings or investigatory hearings are confidential and may not be disclosed except after a vote by the Business Council approving the disclosure.

1-8-42 Felony or Misdemeanor Involving Dishonesty

(a) Article IV, Section 1 of the Constitution of the Confederated Tribes of the Colville Reservation requires that the Council declare vacant the seat of any Councilmember “found guilty of a felony or misdemeanor involving dishonesty in any Indian, State or Federal Court.” For the purposes of this Chapter, “found guilty” shall mean that the Councilmember was convicted and did not appeal the conviction, or that the conviction was upheld after all appeals were final.

(b) Any Councilmember who becomes aware of another Councilmember’s conviction for a crime involving dishonesty should contact ORA to obtain certified copies of any records of conviction and determine if there are any ongoing appeals.

(c) If a conviction was final and is not being appealed, at the next Regular or Special Session of the Business Council, the Chair of the Business Council will present a resolution declaring vacant the seat of the Member that was convicted of a felony or misdemeanor involving dishonesty.

(d) For the purposes of this section, a “felony or misdemeanor involving dishonesty” includes perjury, subornation of perjury, fraud, forgery, tampering with evidence, and any other crime for which a necessary element of conviction is a false statement or convincing another to make a false statement or fail to appear at a hearing as required by law.

1-8-43 Frivolous Complaints—Bonds

Any individual found to have filed a frivolous Complaint shall be required to post a \$500.00 bond if filing again within two years of the filing date of the frivolous Complaint. Any individual found to have filed two frivolous Complaints, shall be required to post a \$2,000.00 bond if filing again within two years of the filing date of the latest frivolous Complaint. Any bonds posted pursuant to this section will be returned to the individual unless the bonded Complaint is found to be frivolous as well.

If a Complaint is deemed frivolous pursuant to 1-8-32, 1-8-33(d), or 1-8-35(d), it is considered a frivolous Complaint for the purposes of this section, regardless of whether a fine is assessed for the costs of any independent investigation.

1-8-44 Severability

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

1-8-45 Prior Inconsistent Codes Repealed

Any Codes of the Tribes which conflict in any way with the provisions of this Chapter is hereby repealed to the extent that it is inconsistent with or is contrary to the spirit or purpose of this Chapter.

1-8-46 Effective Date

This Chapter shall be effective from the date of its approval by the Business Council.

(Adopted 1/14/82, Resolution 1982-44)

Councilmember Complaint Form

I, _____ am filing a Complaint against the following Councilmember(s):

1. My complaint is based on the following facts which I am personally aware of or witnessed (include dates, times, and locations):

2. My complaint is also based on the following facts that I have been informed of by others who were personally aware of or witnessed the following (include dates, times, and locations):

(Attach witness statement for each of the facts that are described in Section 2, if possible.)

(Include any documentation supporting the facts alleged above.)

Under penalty of perjury, this Complaint is true and accurate to the best of my knowledge, I have taken reasonable, good-faith efforts to acquire witness statements and confirm the truth and accuracy of all statements herein, and to my knowledge the allegations of this Complaint have not been the subject of any prior ethics complaints against the Subject(s) of my Complaint.

I acknowledge that if my Complaint is found to be frivolous in accordance with Chapter 1-8 of the Colville Tribal Code, I may be liable for costs incurred investigating my Complaint.

Printed Name

Signature

Date

(Attach any bond required pursuant to Chapter 1-8-43 of the Colville Tribal Code)

LEGISLATIVE HISTORY

The proposed Chapter 1-8 Council's Code of Professional Responsibility provides procedures to process an ethics or rules complaint made against a Councilmember or members pursuant to Resolution 1982-44 and as authorized by Article IV, Section 2 of the Colville Tribes' Constitution and By-Laws. The proposed amendments designates the Tribal Government Committee with the authority to enforce this Chapter and develop comprehensive procedures to handle and process an ethics or rules violation of a Councilmember, in a timely manner.

The amendments to this Chapter do not preclude, when necessary, the Colville Business Council Chair from referring any complaint to the Colville Tribal Chief of Police for further investigation or when sufficient evidence warrants, referral to or special prosecution of any alleged criminal act.

These amendments relate only to ethics complaints and do not in any way limit or change the criminal laws of the Tribes.

Resolution 1982-44 is still enacted and is enforceable, however, the Ethics Committee is no longer a active Committee and the duties herein have not been officially reassigned. It is the intent to clarify the process, identify the Rules Committee and the Tribal Government Committee the active Committee's for the enforcement and implementation of the procedures herein revised and enacted.

(Revised and Codified Resolution 2006-404)
(Certified 12/08/06)

On April 9, 1987 the Business Council passed Resolution 1987-176 which created a "statement of policy regarding proposed rules and discipline for Business Council debate and discussion" which was to be incorporated into the Business Council Code of Professional Responsibility. This policy follows:

CONDUCT OF DISCUSSION AND DEBATE IN COMMITTEE AND FULL SESSIONS

1. Policy

a. **Open Debate**

The Colville Business Council declares that discussion of issue and debate during its sessions, and during the sessions of its standing, special, and ad hoc committees should be free, open, and thorough. No member of the council should be restrained in making statements, asking questions, or advocating positions that are relevant to the debate of any issue. The Council expects its members and persons appearing before it to take strong positions and to act as vigorous advocates of their positions. Such vigorous advocacy is the duty of each member of a representative legislative body.

b. **Personal Attacks**

The Colville Business Council declares that oral personal attacks on any person and by any person are totally unacceptable behavior in Council or committee sessions. As Rule 36 of Roberts Rules of Order states:

"In debate a member must confine himself to the question before the assembly and avoid personalities...It is not allowable to arraign the motive's of a member, but the nature of the consequences of a measure may be condemned in strong terms. It is not the man, but the measure, that is the subject to debate".

The Colville Business Council, therefore, adopts this Rule pursuant to Article II, Section 7, of the Colville Constitution and the Colville Business Council's Code of Professional Conduct.

2. Rules of Debate and Discussion

a. **Personal Attacks Prohibited**

No member of the Colville Business Council or any other person shall; during regular or special sessions of the Council, or during sessions of Council committee of any sort, make personal attacks on any person in attendance or not in attendance at the Council or committee session. Debate and discussion shall be limited to the issues before the body and shall not include the disparagement of personalities or the making of personal insults or defamatory statements.

b. Powers of Council and Committee Chairperson

The person holding the chair of the Council, or of any committee of the Council, shall have the power to rule statements prohibited by Section 2.a. of this Rule out of order and to halt the continuation of such prohibited statements.

c. Expulsion of Persons Making Prohibited Statements

If the person ruled out of order does not immediately cease making the prohibited statements, the chair may order the person expelled from the session.

d. Discipline of Persons Expelled From Meetings

Failure to leave a Council or committee session upon being order to leave by the chair for failure to cease making prohibited statements shall be grounds for discipline under Section 1-8-20 (d) (2) of the Code of Professional Responsibility and Article II, Section 7 of the Constitution.

e. Discipline of Persons Making Repeated Prohibited Statements

Any member of the Council, who repeatedly engages in making prohibited statements requiring Out of Order rulings from Council or Committee Chairperson, shall be subject to discipline under Section 1-8-20 (d) (2) of the Code of Professional Responsibilities and Article II, Section 7, of the Constitution.

(Approved by Resolution 1987-176)