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GRIEVANCE COMMITTEE PROCEDURE**Section 1. Citation**

This Title may be cited as the Grievance Committee Procedure Act of 1990.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 2. Findings

The General Council finds that the following circumstances exist within the Tribal Government of the Kickapoo Nation:

- (a) That various political factions within the Kickapoo Nation have arisen each of which is seriously concerned about future course of the Tribe;
- (b) That the views of these political groups differ as to the most appropriate directions for the Tribe to take in its actions;
- (c) That, while various viewpoints and dissenting views are a positive sign of deep concern about the future of the Kickapoo people, a tendency has developed over the course of several past Business Committee Administrations for some Tribal members to use Constitutional processes designed to protect the Tribe against criminal and other reprehensible actions of Business Committee Members for political reasons;
- (d) That the political abuse of the Constitutional process for removal of Business Committee Members has a detrimental effect upon the whole Tribe;
- (e) That the abuse of the Constitutional removal process is a direct result of the lack of a clearly defined removal procedure which provides direction to the Grievance Committee in the resolution of complaints and grievances, and provides sufficient procedural rules for the application of the Constitutional Process of removal of officers to protect the Tribe, its officers, and the Tribal members against arbitrary and capricious or politically motivated actions;
- (f) That it is in the best interest of the Tribe and its members that specific procedures be provided to govern the removal of officers pursuant to the Grievance Committee Procedure Act of 1990.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 3. Purpose

It is the purpose of this Title to establish simple, fair, straightforward, and efficient procedures to govern the removal of Tribal Business Committee members, to protect Business Committee Members from abuse of the Constitutional removal process for political purposes, and to protect and maintain the right of all Tribal members to protect themselves and the Tribe from criminal or other reprehensible acts of Tribal officers. Whenever the meaning of any provision of this Title may be unclear, it shall be interpreted in such a way as to further the purposes described in this section.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 4. Definitions

The following definitions shall apply through this Title unless another meaning is clearly indicated by the context.

- (a) “Committee” shall mean the Grievance Committee of the Kickapoo Nation.
- (b) “Business Committee” shall mean the Tribal Council.
- (c) “Complaint” shall mean a person bringing a formal complaint for the removal of a member of the Business Committee.
- (d) “Default” shall mean the failure of a party to appear at any hearing after he has been notified that he must attend, or the failure to do any act or file any document required by this Title within the time period specified.
- (e) “Member” shall mean any individual member of the Grievance Committee.
- (f) “Misconduct in office” shall mean one or more of the following acts:
 - (1) He commits misconduct by being finally convicted in any court of competent jurisdiction of a felony or other crime involving dishonesty or moral turpitude, notwithstanding any right to appeal, or
 - (2) He commits misconduct by bribery in official matters if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
 - (i) Any financial benefit as consideration for the recipient’s decision, opinion, recommendation, vote or other exercise of discretion as a Tribal or governmental officer or other employee, or as an official of a party or faction or as a voter; or

(ii) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administration proceeding; or

(iii) Any benefit as consideration for a violation of a known duty as a Tribal or governmental officer or employee.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) He commits misconduct by improper influence in official matters if he:

(i) Threatens unlawful harm to any person with purpose to influence another's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter; or

(ii) Threatens harm to any public servant or relative of a public servant with purpose to influence his decision, opinion, recommendation vote or other exercise of discretion in a judicial or administrative proceeding; or

(iv) Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

(4) He commits misconduct by compensation for past official behavior if:

(i) He solicits, accepts or agrees to accept any financial benefit as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty; or

(ii) He offers, confers or agrees to confer compensation acceptance of which is prohibited by this section.

(5) He commits misconduct by retaliation for past official action if he harms any person by any unlawful act in retaliation for anything lawfully done by another person in his capacity as a public servant.

(6) He commits misconduct by improper gifts to public servants if:

(i) Being a public servant in any department or agency exercising regulatory function, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the Tribe or government, or having custody of prisoners, he shall solicit, accept or agree to accept any valuable benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated; or

(ii) Being a public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other valuable transactions of the Tribe or government, he shall solicit, accept or agree to any valuable benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction; or

(iii) Being a public servant having judicial, legislative, or administrative authority, or being a public servant employed by or in a court or other tribunal having such authority, or being involved in the enforcement of such authority, or being involved in the enforcement of such a tribunal's decision, he shall solicit, accept, or agree to accept any valuable benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a hearing with which he is associated; or

(iv) He knowingly confers or offers or agrees to confer any benefit prohibited by this section. This section shall not apply to:

(a) Fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives lawful consideration or to which he is otherwise entitled; or

(b) Gifts or other benefits conferred on account of kinship or other personal, professional or business

relationship independent of the official status of the receiver; or

(c) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(7) He commits misconduct by official unlawful action if:

(i) Being a public servant, and with intent to benefit himself or another or harm another, he knowingly commits an unauthorized act which purports to be an act of his office or knowingly refrains from performing a nondiscretionary duty imposed on him by law or clearly inherent in the nature of his office; or

(ii) Being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

(a) Acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or

(b) Speculates or wagers on the basis of such action or information, or knowingly aids another to do any of the foregoing.

(8) He commits misconduct by unofficial unlawful action if:

(i) He exercises or attempts to exercise any of the functions of a public office when:

(a) He has not taken and filed the required oath of office; or

(b) He has failed to execute and file the required bond;
or

(c) He has not been elected or appointed to office; or

(d) He exercises any of the functions of his office after his term has expired and his successor has been elected or appointed and has qualified, or after his office has been legally removed; or

(ii) He knowingly withholds or retains from his successor in office of other person entitled to the official seal or any records, papers, documents or other writings appertaining or belonging to his office or mutilates or destroys or takes away the same.

(9) He commits misconduct by official oppression if, when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, and knowing that this conduct is illegal, he:

(i) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(ii) Denies or impedes another in the exercise or enjoyment of any right, power, or immunity.

(10) He commits misconduct by special influence if:

(i) He solicits, receives or agrees to receive any financial benefit as consideration for exerting special influence upon a public servant, or procuring another to do so; or

(ii) He offers, confers or agrees to confer any financial benefit receipt of which is prohibited by this section.

(11) He commits misconduct by misusing public money if, being a public servant or other person charged with the receipt, safekeeping, transfer or disbursement of public monies, he:

(i) Without lawful authority appropriates the money or any portion of it to his own use or the use of another; or

(ii) Loans the money or any portion thereof without lawful authority; or

(iii) Fails to keep the money in his possession until lawfully disbursed or paid out; or

(iv) Deposits the money in a bank without lawful authority or with a person not lawfully authorized to receive such; or

(v) Knowingly keeps any false account, or makes a false entry or makes a false erasure in any account of or relating to the money; or

(vi) Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or

(vii) Knowingly refuses or omits to pay over on lawful demand by competent authority any public monies in his hands; or

(viii) Knowingly omits to transfer money when transfer is required by proper authority; or

(ix) Makes a profit for himself or another not lawfully entitled to such, or in an unlawful manner, out of public moneys; or

(x) Fails to pay over to the proper account or authority any fines, forfeitures, or fees received by him; or

(xi) Otherwise handles public money in a manner not authorized by law for his own benefit or the benefit of another; or

(xii) Handles public money in a reckless manner as a result of which a risk of loss of such money is significant.

(12) He commits misconduct by perjury, if in during any official proceeding, he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(i) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law to be decided by the Committee.

(ii) It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner of that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(iii) No person shall be guilty of misconduct under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(iv) No person shall be convicted of misconduct under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

(13) He commits misconduct by false swearing if he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, if:

- (i) The falsification occurs in an official proceeding; or
- (ii) The falsification is intended to mislead a public servant performing his official function; or
- (iii) The statement is one which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths.

(14) He commits misconduct by unsworn falsification if, with a purpose to mislead a public servant in performing his official function, he:

- (i) Make any written false statement which he does not believe to be true; or
- (ii) Purposely creates a false statement which he does not believe to be true; or
- (iii) Submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
- (iv) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.
- (v) Makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.
- (vi) Subparagraphs (ii), (iii), and (iv) of paragraph (12) of this subsection apply to this paragraph.

(15) He commits misconduct by tampering with witnesses, if:

- (i) Believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:
 - (a) Testify or inform falsely; or
 - (b) Withhold any testimony, information, document or thing; or

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

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

(ii) He harms another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or

(16) He commits misconduct by tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(i) Alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

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

(17) He commits misconduct by tampering with public records if he:

(i) Knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to or received or kept by, the Tribe or government for information or record, or required by law to be kept by others for information of the Tribe or government; or

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

(iii) Purposely and unlawfully destroys, conceals, removes or otherwise impairs the truth or availability of any such record, document or thing.

(18) He commits misconduct by excessive absence from business Committee Meetings if he is absent from four (4) consecutive Business Committee Meetings without reasonable cause for such absences.

(f) "Moral Turpitude" shall mean an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted customs of the Tribe regarding justice, honesty, modesty, or good moral character.

(g) “Public Money” means all money, bonds and evidence of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any account or money held by the Tribe or government, or nay account or money held by the Tribe or government for any individual or group.

(h) “Tribal Court” means the Tribal district Court.

(i) “Tribal Prosecutor” means the Attorney General of the Kickapoo Nation.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER ONE

GENERAL PROVISIONS**Section 101. Swearing in New Grievance Committee Members**

Newly elected members of the Commission shall be sworn into office at the same time as new Business Committee Members are sworn into office with all appropriate dignity and ceremony. Persons appointed to fill any vacant position on the Committee shall be sworn into office prior to performing any duties of office.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 102. Oath of Office

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

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

(History: PUBLIC LAW #KT, 90-14, February 6, 1990)

Section 103. Officers of the Grievance Committee

The Committee shall select from its members a Chairman, Vice Chairman, and a Secretary to serve of the pleasure of the Committee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 104. Duties of Grievance Committee Officers

(a) The Chairman of the Committee shall moderate all meetings of the Committee, and shall generally oversee the actions of the Committee.

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

(c) The Secretary of the Committee shall keep the records of the Committee and all proceedings thereof. It shall be the duty of the Secretary of the Committee to transmit within ten days of filing with the Committee certified copies of all papers, document, orders, rules, transcripts of proceedings, judgments, and other official records of the Grievance Committee to the office of the Secretary of the Tribe for inclusion in the official Tribal records. The Secretary shall certify the authenticity of each record of the Committee so transmitted to the Secretary of the Tribe.

(d) It shall be the duty of each member of the Grievance Committee to personally become familiar with all the provisions of this Title and pertinent provisions of the Tribal Constitution and to see that they are faithfully executed.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 105. General Powers of the Grievance Committee

In addition to any specific authority delegated to the Grievance Committee by any other provision of law, the Grievance Committee, or its individual members shall have the following general powers when used to further the investigation of a complaint or grievance filed by a tribal member.

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

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

(c) To appoint special investigators or referees who may agree to serve the Tribe at no charge to assist in any function of the Grievance Committee or to undertake such investigative duties or arbitration functions as may be assigned by rule, provided that any person who is party to a complaint or grievance or who is related with the third degree to a party may not serve as an investigator or referee.

(d) To have a seal which shall be circular in form and which shall have the word "Grievance Committee of The Kickapoo Nation" inscribed upon it.

(e) To hire and fire its own employees, to purchase supplies and equipment, and to otherwise authorize the expenditure of funds appropriated to its use by the General Council provided that the Committee may not spend any funds in excess of the amount

appropriated and the business office shall not issue checks for any amount which will cause a budget deficit in any line item, provided further that the Grievance Committee shall present its proposed budget at the annual General Council Meeting of each year for consideration.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 106. Records to be Kept Permanently

(a) Every paper, pleading, motion, order, notice or other instrument filed shall be kept in a permanent file as part of the record in the action. One certified copy of the entire record shall be kept in the Tribal Secretary's permanent file.

(b) Each and every hearing conducted by the Grievance Committee shall be recorded verbatim by court reporter, stenographer, or magnetic tape recorder, or similar method which shall be a permanent record. The record of each hearing shall be duplicated and shall be transcribed into typewritten form as soon as possible after the hearing.

(c) The record of each removal action shall be a permanent public record, and any person shall be entitled to examine that record upon request during normal business hours, provided that no part of the permanent record shall be taken from its ordinary place of safekeeping for such examination.

(d) Any person may obtain copies of the record of a removal action, certified as to authenticity as provided in Section 607 hereof upon payment of such fees for reproduction costs as may be established by the Grievance Committee or the Tribal Secretary's office as the case may be.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 107. Default

Upon default by any party, the Committee may enter an appropriate order resolving the complaint against the party in default, or may allow that party to cure his default as may be deemed fair and just by the Committee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 108. Assigning Case Numbers

The Committee shall assign each formal complaint made under this Title a file number which shall be separate and distinct from the file numbers assigned to all other cases. A consecutive numbering system shall be used, and such number shall appear on each record, document, or thing regarding the case.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 109. Complaints to be Made Separately

A formal complaint filed pursuant to this Title shall be against one Business Committee member only. Any complaint submitted for filing naming more than one Respondent member of the Business Committee shall be rejected by the Grievance Committee or dismissed upon motion of a Respondent.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 110. Joinder of Complaints

(a) Upon motion of any party, any complaints filed against the same Business Committee member may be joined for Hearing the Merits or for Hearing before the General Council or both in order to save time and expense for the parties and the Tribe, and to prevent duplication of effort.

(b) Upon motion of any party, any complaints filed against two different Business Committee members may be joined for Hearing on the Merits or for Hearing before the General Council or both in order to save time and expense for the parties and the Tribe, and to prevent duplication of effort, provided that in order to be joined, the complaints must address the same transaction or occurrence, and provided further that no prejudice is shown to the respondents from such joinder.

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 111. Removal of Two Business Committee Members Results in a Stay of Further Removal Proceedings

At any time during which two vacancies exist on the Business Committee due to the death, resignation or removal of members of the Business Committee, all further removal proceedings shall be immediately stayed by the Grievance Committee in their current status pending appointment of new Business Committee members Provided that a WRIT OF MANDAMUS will be issued by the Tribal court against the Business Committee and its remaining members to compel such appointments in any proper case and any immunity of the Business Committee and its member officers from suit by reason of being an agent of the sovereign Kickapoo Nation is hereby waived for purpose of such Writ and its enforcement.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 112. Double Jeopardy Rules to Apply

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

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

(c) It shall not be improper to continue the proceedings after a determination upon direct judicial review that a complaint was improperly dismissed or upon overturning an order of the Committee or Council on motion of the Respondent, unless such order was overturned on the basis of lack of evidence or other cause which precludes further proceedings.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 113. Complaints to be Brought in the Name of the Tribe

All formal complaints shall be brought by the complainant on behalf of the Kickapoo Nation.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 114. Severability

It is the intent of the Kickapoo Nation that if any part of this Title is found to be unconstitutional or in violation of the Indian Civil Rights Act of 1978, whether on its face or as applied, that such remaining provisions of this Title as may be enforced shall remain in full force and effect and to such end this Title is declared to be severable.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 115. Disposition of Costs

Any fees or costs required to be collected by any person by any provision of this Title shall be forthwith delivered to the Business Office and shall be deposited in the general fund of the Tribe and shall be subject to appropriation for Tribal purposes by the Business Committee. Collection of the fees or costs shall be entered into the record, the payer shall receive a receipt therefore, and the collector shall be issued a receipt therefore from the Business Office upon tender for deposit.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 116. Procedures Not Defined – Action Taken

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER TWO

INFORMAL ADJUSTMENTS**Section 201. Grievance Committee to Represent Tribal Members**

The Grievance Committee, and each member thereof, is hereby authorized and directed to act as spokesman for any tribal member who is aggrieved by any action or inaction of the Business Committee or its members upon request of the tribal member whether or not the action or inaction would constitute misconduct in office as defined in this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 202. Requests for Assistance may be Verbal

Any request for assistance under this Chapter may be made verbally to a member of the Grievance Committee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 203. No Formality or Records Necessary

No formality shall be required for assistance under this Chapter, and no records need be kept regarding requests for assistance or the results thereof.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 204. Grievance Committee Without Authority to Make Orders

When acting as an informal spokesman for a tribal member, the Grievance Committee and its members shall be without authority to order any member of the Business Committee to act or to refrain from acting. The Grievance Committee shall also, in these circumstances be without authority to call a General Council meeting or consider the removal of any member of the Business Committee absent compliance with Chapter 3 of this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 205. Requests for Assistance Presumed to be Pursuant to this Chapter

Absent compliance with Chapter 3 of this Title, all requests for assistance directed to the Grievance Committee shall be presumed to be a request for an informal adjustment pursuant to this Chapter.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 206. Purpose of this Chapter

The purpose of this Chapter is to provide authority to the Grievance Committee to informally provide arbitration between the Business Committee and tribal members who feel that they have been aggrieved when the complaint of the tribal member does not amount to misconduct in office or when the tribal member needs other assistance in communicating his need or desires to the Business Committee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 207. Duties of Parties

It shall be the duty of the Business Committee and its members, and the Grievance Committee and its members to attempt in good faith to resolve the problem presented by the tribal member or to explain the reasons the problem cannot be resolved. Either the Business Committee or the Grievance Committee shall refer the tribal member to any agency which can assist him when a referral might be beneficial to that tribal member.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER THREE

PROCEDURE FOR HEARING**Section 301. Commencement of Removal Action**

A Removal Action is commenced by filing a written complaint with the Grievance Committee and serving a copy on the respondent as provided by this Title. The Grievance Committee shall have jurisdiction from such time as the complaint is both properly filed and properly served upon the respondent and a return of service is filed with the Grievance Committee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 302. Pleadings Allowed

In a Removal Action there shall be a Complaint by the person bringing the complaint and an Answer by the respondent. The Committee may grant permission for further pleading if it will help to narrow and define the issues to be heard.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 303. General Content of Pleadings**(a) The Complaint.**

(1) A pleading which calls for the removal of a member of the Business Committee shall contain:

(i) A short plain statement of the facts which the complaining party will rely upon to show that the respondent has engaged in Misconduct in Office as defined by this Title.

(ii) A demand that the respondent be removed from office by the General Council.

(iii) An affidavit under oath of the complaint that he has read the complaint, that he has personal knowledge of the facts alleged in the complaint and that the facts alleged in the complaint are true.

(iv) The name and address of the complaint and his Attorney if he is represented.

(2) The purpose of requiring a statement of the facts relied upon is to notify a person of reasonable understanding of the exact act of commission or omission being complained of so that he can prepare a defense to the charges, and to avoid unfair surprise and advantage. Accordingly, if the complaint does not state facts but simply accuses the person of misconduct or states simply conclusions of wrongdoing, the complaint shall be dismissed upon motion of the respondent or by the Grievance Committee on its own motion. For the same reason, no act of omission or commission which is not alleged in the complaint may be presented to or relied upon by the Grievance Committee or the General Council in determining the action.

(3) In order to enforce the previous subsection, the Grievance Committee shall be empowered, upon violation of that subsection, to dismiss the complaint at any stage in the proceeding.

(b) **The Answer.**

(1) Factual Disputes. A party shall state in plain concise terms the grounds upon which he bases his defense to the complaint plead against him, and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement, or averment. A general denial shall not be made unless the respondent could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, shall be deemed admitted unless denied; if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.

(2) Affirmative Defense. Matters constituting a legal defense or avoidance shall be affirmatively set forth. When a party has mistakenly labeled a pleading the Grievance Committee may treat the pleading as if it had been properly designated if justice so requires.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 304. Form of Pleadings

(a) **Caption.** Every pleading shall contain a caption heading, the title of the action, the Grievance Committee file number (if known) and a designation of what kind of pleading it is. The caption shall be in substantially the following form:

**REMOVAL PROCEEDING BEFORE THE GRIEVANCE COMMITTEE
KICKAPOO NATION**

(Insert Complainant's Name))
ON BEHALF OF THE)
KICKAPOO NATION)
)
Complainant,)
)
vs.) No. (Insert File No.)
)
(Insert Bus. Comm.Members name),)
)
Respondent)

(Insert "Complaint" or "Answer")

(b) **Paragraphs.** All statements of complaint or defense shall be set forth in separate numbered paragraphs each of which is limited as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

(c) **Exhibits to Pleadings.** A copy of a written document which is attached to a pleading and adopted in the pleading as an exhibit is a part thereof for all purposes.

(d) **Adoption by Reference.** Statements in a pleading may be adopted by reference in a different part of the same pleading, in any other pleading, or in any motion.

(e) **Paper Used in Pleadings, Pleadings to be Typed.** Insofar as is possible, pleadings and other papers filed in any action shall be typed double spaced on legal size white plain bond paper, except for matters customarily single spaced, contain at least a two-inch top margin and one-inch bottom and side margins, and contain the file number of the first page. Substantial compliance with this rule will be sufficient for all parties not represented by a professional attorney or advocate of the Tribal Court.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 305. Filing the Complaint

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

(b) Prior to accepting a complaint for filing, the Grievance Committee member shall require a filing fee to be paid in the amount of One Hundred Dollars (\$100.00) which shall be taxed as costs of the action. This filing fee shall be paid by certified check or money order made payable to: "The Kickapoo Nation." It shall be

delivered immediately to the Business Office and deposited in the general fund of the Tribe.

(c) Upon representation of the Complaint and payment of the filing fee, the Grievance Committee member shall immediately write upon each copy the exact time and date of filing, the fact that the filing fee has been paid and sign his name in substantially the following form:

FILED With the Grievance Committee of the Kickapoo
Nation with the filing fee duly paid and received by me
At _____ o'clock _____ .m. This
_____ day of _____, 19__.

Grievance Committee Member

(d) The Grievance Committee member receiving the complaint shall forthwith return one copy of the Complaint to the Complainant, deliver one copy to the Tribal Secretary for the official Tribal files, deliver one copy to each Grievance Committee member, and place the original and one copy in the Grievance Committee files. One copy shall be delivered to the Chairman of the Grievance Committee for service upon the respondent.

(e) The Chairman or, upon his failure or refusal to do so, any other member of the Grievance Committee shall forthwith prepare and issue a Summons and cause it to be served upon the respondent.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 306. Service of Process

Service of process shall consist of delivering to the party served a copy of the complaint along with a summons, issued by the Chairman of the Grievance Committee or some other member if he is unable to do so, which advises the respondent that he is required to answer the complaint within (20) twenty days or a default judgment will be entered against him and the complaint referred to the General Council for action.

(a) The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the Grievance Committee.

(b) Service may be made on a party by delivering the required papers to the party himself or upon some person of suitable age and discretion over fourteen (14) years old at the party's home or principal place of business.

(c) Service by publication may be made upon order of the Grievance Committee for good cause shown by publishing the contents of the summons in local newspaper of general circulation at least once per week for four weeks and by leaving an extra copy of the complaint or paper with the Tribal Secretary for the party.

(d) Service may be made by and law enforcement officer or other person, not a party, eighteen (18) years of age or older as may be designated by the Grievance Committee.

(e) Service may be made by certified mail deliverable to addressee only; return receipt requested showing the place, date, and person receiving same. Certified mail service shall be complete upon return of the postal receipt with the respondent's name subscribed thereon.

(f) Service upon a member of the Business Committee or a Complaint may be made anywhere in the United States.

(g) If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

(h) All papers required to be filed shall be served as under this rule, or except for the summons and complaint, may be served on the counselor or attorney of a party. Service of all papers except the summons and complaint may be made by mail, first class postage prepaid and properly addressed, provided that all papers so served shall contain a statement signed by the person mailing them certifying that they were mailed to the other party in compliance with this section.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 307. Form of Summons

The summons shall contain the caption of the case and be in substantially the following form”

**REMOVAL PROCEEDING BEFORE THE GRIEVANCE COMMITTEE
KICKAPOO NATION**

(Insert Complainant's Name))
ON BEHALF OF THE)
NATION)
))
Complainant,)
))
vs.) No. (Insert File No.)
))
(Insert Bus.Comm.Members name),)
))
Respondent)

SUMMONS

THE KICKAPOO NATION:

(Insert respondent's name, address, and office held)

A complaint has been filed against you alleging that you have committed misconduct in your office as a member of the Business Committee as is more fully set out in the Complaint which is attached to this Summons. You are required to file a written answer to this complaint with the Grievance Committee within twenty (20) days of service of this summons upon you and to serve the complainant or his attorney with a copy of your answer. IF YOU FAIL TO FILE ANSWER WITHIN 20 DAYS THE ALLEGATIONS CONTAINED IN THE COMPLAINT WILL BE TAKEN AS TRUE AND THIS COMMITTEE WILL CALL A GENERAL COUNCIL MEETING FOR THE PURPOSE OF REMOVING YOU FROM OFFICE.

Grievance Committee Chairman (member)

[Seal}

The name and address of the complainant and his attorney is:

Complainant Complainant's Attorney

RETURN OF SERVICE

I hereby certify that on the _____ day of _____, 19 _____,
at the hour of _____ o'clock ____m., I served the above named respondent with a
copy of this Summons and the Complaint filed herein by _____

at _____

(described the manner and place of service)

Signature

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 308. How to File Documents with the Committee

(a) Any Answer, Return of Service, Motion, Brief, or other instrument required to be filed may be filed with the Grievance Committee either by personally delivering same to any Grievance Committee member by certified mail return receipt requested on or before the due date.

(b) An original and seven copies of all instruments shall be filed.

(c) The Committee member receiving the instrument for filing shall immediately write upon each copy of the exact time and date of filing and sign his name in substantially the following form:

FILED with the Grievance Committee of the Kickapoo
Nation at _____ o'clock _____.m. this _____ day of
_____, 19 _____.

Grievance Committee Member

(d) The original and copies of the filed instrument shall be distributed as provided in Section 305(d) of this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 309. Computation of Time in Which to do Acts

(a) **Computation.** In computing any period of time set forth herein, the day that the period is to commence from shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday.

(b) **Enlargement.** The Committee for good cause shown may enlarge the prescribed period of time within which any required act may be done upon Motion of any party.

(c) **Notice of Motions.** Written motions and notice of hearing thereon, other than ones which may be heard ex parte, shall be served not later than five (5) days prior to the time specified for hearing.

(d) **Service by Mail.** Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 310. When to File the Answer

(a) **When Presented.** A respondent against whom a complaint has been made shall have twenty (20) days from the date of service upon him to answer or respond to the complaint.

(b) **Motions.** Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a complaint and an answer will not be due until ten (10) days after the disposition of the motion by the Grievance Committee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 311. Amendment of Pleadings

A party may amend his pleadings once before the opposing party has replied or if no reply is required, not less than twenty (20) days before the case is scheduled for a Hearing on the Merits. The opposing party may respond, if appropriate, and the hearing date be delayed if necessary. Other amendment shall be allowed only upon motion and order of the Committee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 312. Motions Generally

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

(b) All motions except those which arise during the conduct of a hearing shall in writing in the form prescribed by Section 304(e) of this Title, and shall be filed and served on the adverse party as provided by this act.

(c) When a motion is filed, the Committee should schedule a hearing on the motion and notify the parties of the time and place for the hearing. The party making the motion generally has the burden of showing that his request is lawful and just or

otherwise required by law. Therefore, at the Motion hearing, the moving party will be allowed to present his motion, the other party may then respond, and the moving party may then rebut. The Committee may question the parties about their positions and must then reach a decision.

(d) The decisions of the Committee on Motions made by the parties should be written out and placed in the case file.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 313. Discovery

(a) **Interrogatories.** A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within twenty-five (25) days of receipt of such.

(b) **Depositions.** Oral deposition may be taken of a party or a non-party witness only upon the stipulation of the parties or upon order of the Committee based upon the demonstrated inadequacy of other discovery methods under the circumstances.

(c) **Production, Entry, or Inspection.** A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the complaint, and the opposing party shall within twenty-five (25) days reply as to whether or not such will be allowed and if not, why not.

(d) **Scope of Discovery.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at the hearing, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.

(e) **Protective Order.** A party against whom discovery is sought may move the Committee for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Commission may order that the discovery cease or proceed only upon specified conditions.

(f) **Failure to Make Discovery.** If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Committee may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Committee, the Committee may, upon motion, order that a certain fact, claims, or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by a default against the non-complying party in an aggravated case.

(g) **Use of Discovery.** Answers to interrogatories and dispositions may be used in a motion hearing or at a hearing on the merits to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose, or to supply evidence otherwise unavailable to the Committee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 314. Dismissal of Actions

(a) **Voluntary Dismissal.** Prior to the responsive pleading of a party against whom a complaint has been made or a motion to dismiss or for summary judgment on such claim, the party making the claim may file a notice of dismissal, and his complaint shall be deemed dismissed without prejudice. In all other circumstances a party may move the Committee to dismiss his own claim, and the Committee shall do so either with or without prejudice as is just and proper given the stage of the proceedings.

(b) **Involuntary Dismissal.** A party against whom a complaint has been made may move the Committee to dismiss the complaint of the adverse party upon any of the following grounds:

(1) Failure of the Complaint to state facts sufficient to show that misconduct in office occurred and that the respondent committed the misconduct;

(2) Failure of the adverse party to pursue prosecution of his claim; or

(3) Failure of the adverse party to comply substantially with this Title;
or

(4) Failure of the adverse party to comply with an order of the Committee; or

(5) At the close of the presentation of the other party's evidence and without prejudice his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented;

(6) Whenever dismissal appears proper based upon a failure to prove a claim.

(c) Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the Committee shall, for good cause shown, order otherwise. The Committee may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

(d) The Committee may order a party moving to dismiss his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 315. Evidence

(a) **Form and Admissibility.** At all hearings the testimony of witnesses shall be taken orally under oath, unless otherwise provided in this Title. All evidence admissible under the Tribal Code or under the Federal Rules of Evidence shall be admissible and the competency of witnesses to testify shall be similarly determined.

(b) **Examination and Cross Examination.**

(1) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

(2) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 316. Subpoenas

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

(b) **Service.** Subpoenas may be served in any manner in which a complaint and summons may be served.

(c) **Failure to Appear.** A person who has been properly served with a subpoena and fails to appear or produce without lawful cause may be deemed in contempt of the Grievance Committee and the Committee is authorized to impose a civil penalty of not less than Fifty Dollars nor more than Two Hundred Fifty Dollars (\$250.00) for such contempt. Upon notice from the committee, it shall be the duty of the Tribal Prosecutor to bring an action in the Tribal court for the collection of such penalty and for execution upon the property of such person if necessary.

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 317. Witness Fees

Witnesses attending a hearing pursuant to a subpoena shall be entitled to their reasonable and necessary travel expenses and a witness fee of three and 50/100 (\$3.50) dollars per hour from the time they must arrive to be in attendance until released from the subpoena by the Committee, such fees shall be taxed as costs of the action.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 318. Form of Subpoenas

All subpoenas shall be issued in substantially the following form:

**REMOVAL PROCEEDING BEFORE THE GRIEVANCE COMMITTEE
KICKAPOO NATION**

(Insert Complaint's Name))
ON BEHALF OF THE)
KICKAPOO NATION)
)
Complainant,)
VS.) No. (Insert File No.)
)
(Insert Business Committee)
Members Name Here),)
Respondent)

SUBPOENA

THE KICKAPOO NATION:

(Insert name and address of witness)

You are hereby ordered to appear at a hearing before the Grievance Committee of the Kickapoo Nation wherein _____ if the Complainant and _____ is the Respondent at the hour of ____ o'clock ____ m. on the _____ day of _____, 19__ at the Kickapoo Tribal Council, and to remain in attendance thereafter until released by the Grievance Committee so that you may present testimony in that action as requested by the _____.

You are further ordered to bring to this hearing the following books, records, documents, or things in your possession or under your control:

IF YOU FAIL TO APPEAR AS ORDERED YOU MAY BE PUNISHED OR PENALIZED BY LAW.

Grievance Committee Member

RETURN OF SERVICE

I hereby certify that on the _____ day of _____, 19 _____,
at the hour of _____ o'clock _____ .m., I served the above named _____
named _____ with a copy of this
subpoena by _____

at _____
(describe the manner and place of service)

Signature

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 319-350. Reserved for Future Legislation

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 351. Setting Date for Hearing on the Merits

(a) Upon the motion of either party or upon its own motion, the Grievance Committee shall set a time and date for a hearing upon the merits of a complaint. The hearing may be set at any time after the Answer is filed. The date for the hearing should be set at a time such that discovery and pre-hearing motions can be completed prior to the hearing, but soon enough that the merits of the complaint can be heard with all reasonable speed.

(b) The Committee may continue the hearing on the merits of the complaint from time to time upon notice for good cause shown or on its own motion.

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

(d) All hearings of the Grievance Committee shall be held at the Kickapoo Tribal Offices.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 352. Role of the Grievance Committee in Hearings

The role of the Grievance Committee in all hearings of the Committee shall be that of finders of fact and interpreters of the law. As such they should hear the evidence submitted by the parties, and decide from the evidence submitted to them all questions of law and fact presented. It is improper for a Grievance Committee member to participate or assist a party in presenting his case before the Committee. However, it is proper for a Committee member to question any witness after both parties have finished their questioning in order to clarify any questions that Committee members may have. A member of the Committee should not discuss the case with any party unless the other party is also there to participate in the discussion.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 353. Quorum

The Grievance Committee may conduct a hearing on the merits of a complaint only if at least two members of the Committee are actually in physical attendance at the hearing, provided that a single member of the Committee may continue the hearing from time to time if a quorum is not present. A record shall be made of Committee members present and absent.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 354. General Order of Hearing

(a) At the time, date, and place specified in the notice of hearing, and upon the readiness of the Grievance Committee, the hearing shall be called to order by the Chairman of the Grievance Committee.

(b) The Chairman should ask the parties if there are any preliminary matters to be considered or if they are ready to proceed. Preliminary issues should be considered first and upon their determination and the parties announcing ready to proceed, or upon overruling a motion to continue the Committee shall order the hearing to begin.

(c) The Complainant may then present an opening statement. The opening statement is not an argument and is not evidence, but is an opportunity to present a

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

(d) The Complainant shall then call its witnesses and offer its evidence in support of the complaint. At the end of the complaint's presentation of his evidence, the Respondent may move to dismiss the Complaint if sufficient evidence has not been introduced to show, if it were to be believed, that misconduct in office has occurred. The Committee shall rule upon this motion before continuing the hearing.

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

(f) When all the evidence has been presented, the complainant, and the respondent, may make a closing argument. The closing argument is not evidence but is an opportunity for each party to summarize the evidence presented which he thinks in his favor, to show how that evidence supports his theory of the action. It is also his opportunity to state why the evidence supports his theory of the action. It is also his opportunity to state why the evidence presented by the other party is not believable or reliable or insufficient to support the claim or defense of the other party.

(g) After the closing arguments are made and any post hearing motions are decided, the Committee shall recess the hearing and retire to a private place to consider their decision. Upon making a decision they shall call the hearing to order and announce their decision to the parties and the public subject to the provisions of Section 359 of this Title.

(h) At any time within five (5) days after the decision of the Committee on the merits is announced, either party may, by motion, ask the Committee to reconsider their decision on grounds specifically stated in the motion. The Committee may rule on such motion without a hearing or may order a hearing to be set on the motion.

(i) This order of hearing may be changed by order of the Committee on Motion of a party for good cause shown and in the interest of justice and fairness.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 355. Taking Testimony of a Witness

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

(a) **Direct examination.** The party calling the witness may question the witness about any matter relevant to the issues presented in the complaint.

(b) **Cross examination.** The adverse party may then question the witness about any testimony given on direct examination and, further, may question him about any other matter relevant to the issue presented in the Complaint, or relevant to the witnesses' honesty, reliability, or ability to perceive, remember, or relate the facts.

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

(d) **Recross examination.** The adverse party may then question the witness on any issue raised in the redirect examination.

(e) **Clarification.** Any member of the Committee may then question the witness on any issue previously raised in order to clarify his understanding of the testimony of that witness.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 356. Rulings on Motions – Briefs

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

(b) Rulings on motions concerning procedural issue only which do not affect substantial rights of the parties may be made by any member of the Committee or as may otherwise be provided by the Committee by rule.

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

(d) Rulings on any motion which would result in calling a General Council meeting to consider the removal of the Respondent shall require a unanimous vote of the Committee Members present in order to take any action which would result in calling a General Council meeting. Failure to receive a unanimous vote of the Committee members present shall be deemed a denial of the motion.

(e) All votes on motion shall be recorded and be part of the record.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 357. Burden of Proof

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 358. Standard of Proof

In order for these to be proper showing that misconduct in office has occurred each and every member of the Committee must be convinced that clear and convincing evidence has been introduced at the hearing which established that each element of misconduct as defined by this Title has occurred and that the Respondent is responsible for the misconduct.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 359. Findings and Order to be in Writing

(a) Upon reaching a decision as required by Section 354(g) of this Title and before announcing that decision to the parties or the public, the Grievance Committee shall state in writing the facts that they have found to be proved by clear and convincing evidence, the conclusions they have reached from those facts, and whether or not those facts, as a matter of law, prove each element of misconduct in office.

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

(c) If all the members of the Grievance Committee present do agree that misconduct in office has been clearly and convincingly established by the evidence presented, then a proper showing of misconduct in office has been made and the Grievance Committee shall order the Respondent bound over for trial on the complaint before the General Council.

(d) The respondent may be bound over on one or more counts in the complaint and not upon others which shall be dismissed.

(e) Each Committee member present shall sign the findings and order indicating his agreement or disagreement with the findings and order, or may separately state his findings and what he would order in writing.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 360. Costs and Attorney Fees

(a) The Grievance Committee shall ordinarily award the prevailing party his costs in the action in the Committee's findings and order. Upon a showing of good faith in prosecuting or defending the action, a showing that the party had in fact a reasonable claim or defense, and that an award of costs would impose an undue hardship on the non-prevailing party the Committee may order each party to pay their own costs or may divide the costs between the parties as justice may require.

(b) If the Committee finds that a party complained or defended in bad faith, or that the complaint or defense was presented primarily for frivolous, political, harassment, or other unlawful purposes, the Committee shall award the prevailing party his costs and a reasonable attorney fee.

(c) Any order of the Committee awarding costs or attorney's fees shall be considered as judgment by the Tribal Court, and upon filing a certified copy of the Findings and Order with the Clerk of the Tribal Court, the Court may use any civil process available under the law including but not limited to, garnishment and execution to secure payment to the prevailing party.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 361. Result of False Swearing

If the Committee has reason to believe that the complaining party swore falsely in making the complaint, or that any party or witness has otherwise perjured themselves under oath, or that any violation of the law has occurred, they or some one or more of them shall forthwith notify the Tribal Prosecutor and the Tribal police of their belief and the facts which support that belief appropriate action may be taken.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 362. Private Cause of Action Created

In addition to any common law actions available, any Business Committee member who is the subject of a complaint shall have a cause of action in the Tribal Court for all his actual damages including damage to his reputation against the person making the complaint upon showing that the complaint was filed, that the Business Committee member prevailed and the complaint was dismissed without General Council action and that the complaining party had no probable cause for bringing the complaint. Upon an additional showing that he complaint was frivolous or was filed for purposes of political advantage, harassment, intimidation, or any other unlawful purpose, the court may award punitive damages.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER FOUR

PROCEDURE FOR HEARING**Section 401. Calling the General Council Meeting**

(a) Upon entering its findings and order binding the Respondent over for trial on the complaint before the General Council pursuant to Section 359 of this Title, the Grievance Committee shall enter an order calling a meeting of the General Council on a specified time and date at the Kickapoo Community Building on the Kickapoo Tribal lands near of Horton, Kansas not less than ten (10) days after the date of order.

(b) Each member of the Grievance Committee who participated in the hearing on the merits shall sign the order calling the General Council Meeting.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 402. Notice of General Council Meeting

Notice of the General Council Meeting shall be published once each week for two consecutive weeks in a newspaper of general circulation in the Horton, Kansas, and Brown County areas, and shall be posted from the date of entering the Order for General Council Meeting on each entry door to the Kickapoo Tribal Complex so that it is clearly readable when entering or leaving the building, and insofar as possible, on the bulletin boards at the Horton Indian Agency, and the Kickapoo Housing Authority office. The notice may be posted or distributed by additional methods at the discretion of the Grievance Committee. Expenses incurred in publishing notice shall be taxed as costs.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 403. Form of Notice

The notice of the General Council Meeting shall be in substantially the following form:

**REMOVAL PROCEEDING BEFORE THE GRIEVANCE COMMITTEE
KICKAPOO NATION**

(COMPLAINANT'S NAME), On)
Behalf of the)
Kickapoo Nation)
)
Complainant,)
)
vs.) No. CASE NUMBER
)
(BUSINESS COMMITTEE)
MEMBERS NAME),)
)
Respondent)

NOTICE OF GENERAL COUNCIL MEETING

THE KICKAPOO NATION:

Each and every member of the Kickapoo General Council.

YOU ARE HEREBY NOTIFIED that a complaint has been filed with the Grievance Committee alleging that (Respondent) has committed misconduct in his office as a member of the Business Committee and that the Grievance Committee has determined upon hearing that a proper showing has been made to cause (Respondent) to be brought before the General Council for a hearing to determine whether (s) he should be removed from office.

Therefore, pursuant to the power vested in the Grievance Committee by Article III of the Constitution of the Kickapoo Tribe, the General Council will be called into session at ____ o'clock ____ .m. on the ____ day of _____, 19 ____, at the Kickapoo Tribal Offices on the Kickapoo Tribal Reservation for a hearing to determine whether (Respondent) should be removed from office.

This notice posted this _____ day of _____, 19 _____, at the hour of _____ o'clock ____ .m., as required by law.

GRIEVANCE COMMITTEE:

BY: _____

Chairman

Member

Member

[Seal]

CHAPTER FIVE

GENERAL COUNCIL REMOVAL HEARING**Section 501. Council Members to Sign In**

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

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 502. Hearing Open to All Persons

The meeting of the General Council to hear a complaint of misconduct in office shall be an open meeting and no person may be excluded therefrom except for disruption of the Council proceedings upon order by the Grievance Committee, provided, that no still or motion picture cameras or recording equipment other than the official recorder shall be allowed in the Council chambers.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 503. Quorum Count

(a) At the time designated in the notice or as soon thereafter as possible the Grievance Committee shall call the General Council to order and determine whether a quorum is present.

(b) If a quorum is present the Grievance Committee shall proceed with the trial.

(c) If a quorum is present the Grievance Committee shall proceed with the trial.

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

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 504. Relationship of Grievance Committee and General Council

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

(b) The General Council shall serve as jury of the whole and as such shall determine from the evidence presented to them whether the Respondent is to be removed from office.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 505. Swearing in the Council

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

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

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 506. Order and Manner of Hearing

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

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

Section 507. Dismissal Upon Complainant's Misconduct

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 508. Deliberation of the Council

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 509. Voting by the Council

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 510. Forms of Ballots

The ballots shall be in substantially the following form:

BALLOT IN REMOVAL PROCEEDING NUMBER _____

Shall (Respondent) be removed from his office as a member of the Business Committee Due to Misconduct by _____?

[] YES
[] NO

and shall be retained as part of the permanent record in the case.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 511. Counting the Ballots – Judgment

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

(a) If one-half or less of those persons present vote “Yes”, then the complaint is dismissed and the Respondent will remain in office, and shall enter such findings in the record.

(b) If more than one-half of those persons present vote “Yes” then the Grievance Committee shall announce that the complaint has been sustained and that the Respondent is removed and is no longer an officer of the Tribe or member of the Business Committee, and shall enter such findings in the record. The Bureau of Indian Affairs and any other interested person shall be notified of the removal of the Respondent from office.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 512. Adjournment

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

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

CHAPTER SIX

JUDICIAL REVIEW**Section 601. Purpose**

The purpose of providing for judicial review of a removal action is to safeguard the substantive and procedural rights of the parties as granted by the Tribal Constitution and this Title.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 602. Right of Review

(a) Either the Complainant or the Respondent is entitled to seek judicial review of any final order the Grievance Committee or the General Council. An action in the Tribal Court seeking review of a final order shall not be dismissed nor relief thereon denied on the ground that it is against the Kickapoo Nation, the Grievance Committee, the General Council, or the officers thereof. Any of these entities may be made parties in such an action and a judgment or decree may be entered against them in the Tribal Court notwithstanding the doctrine of Sovereign Immunity which is hereby expressly waived for these purposes **provided** that nothing contained herein shall authorize any money judgment to be entered against the Kickapoo Nation, the Grievance Committee, the General Council, or the officers thereof, provided further that nothing contained herein shall affect other limitations on judicial review or the power or duty of the Tribal Court to dismiss any action or deny relief on any appropriate legal or equitable ground other than the doctrine of Sovereign Immunity, provided further that any mandatory or injunctive decree shall specify the parties personally responsible for compliance.

(b) A preliminary, procedural, or intermediate action, order, or ruling not otherwise directly reviewable may be reviewed on the review of the first final order entered after the preliminary, procedural or intermediate action, order, or ruling in question, provided that if review of the first final order entered after the preliminary, procedural, or intermediate action order or ruling is not obtained, then any error alleged to have been committed prior to that final order shall be deemed forever waived.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 603. Final Orders

The final orders subject to judicial review shall be:

- (a) Any order or action dismissing the Complaint except a dismissal by the General Council on the merits.
- (b) Any order or action sustaining the Complaint and calling a General Council meeting to act upon such Complaint.
- (c) Any order or action of the General Council removing the Respondent from his office as a member of the Business Committee.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 604. Notice of Intent – Stay of Proceedings

(a) Any party who wishes to obtain judicial review of a final order shall orally notify the Grievance Committee of his intent to obtain judicial review at the time the reviewable order is entered and before adjournment of that particular session, hearing, or meeting.

(b) Upon notice of intent to obtain judicial review, the Grievance Committee shall stay the effect of its order and all further proceedings in the action for a period of five (5) working days.

(c) Upon filing with the Grievance Committee, within five (5) working days, a certified copy of a petition filed in the Tribal Court seeking review of the Committee's decision or other action, the Grievance Committee shall continue the stay of its order and all further proceedings until a final determination of the petition is made by the Tribal Court.

(d) If no petition is filed in the Tribal Court seeking review of the final order within five (5) working days of the date of the order, all right to judicial review shall be deemed waived, the Committee shall order the stay dissolved, its order in full force and effect, and shall continue its proceedings as may be required by law.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 605. Real Party in Interest to Defend

The real party in interest to the judicial review proceeding shall be served with all process in that proceeding, and shall defend on behalf of the Grievance Committee, General Council, or other Tribal Defendant, provided that this Section shall not prevent the Tribal Defendant from defending on its own behalf.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 606. Review to be on the Record

The review to be had in the Tribal Court shall not be a separate trial on the merits, but shall consist of a review of the record made at the hearing conducted by the Grievance Committee for errors in law.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 607. Record Delivered to the Tribal Court

Upon receiving a certified copy of a petition seeking review before the Tribal Court, the Secretary of the Grievance Committee shall prepare a copy of the record of the Committee, or so much of it as may be necessary in the belief of the parties or the Committee to determine the issues presented for review, and shall transmit the copy of the record to the Clerk of the Tribal Court. The Secretary of the Committee shall attach thereto the following certificate:

I, (insert name of the Committee’s Secretary), hereby Certify, that the foregoing record is a true and correct Copy of the records of the Grievance Committee of the Kickapoo Nation in this case insofar as the parties have Requested that this record be prepared for judicial review. The following documents or objects are included in this Record:

(Here list each document, paper, tape, or other object by date, name, and description)

Done this _____ day of _____, 19_____.

[SEAL]

Grievance Committee Secretary

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 608. Costs of the Record – Copies to Parties

A reasonable fee shall be collected to defray the costs of reproducing three copies of the record from the party ordering the same, or, if both parties order the same document, from the party seeking judicial review. The Tribal Court shall require each party to present a receipt from the Secretary of the Grievance Committee showing that they have paid their share of the costs of the record before allowing that party to appear in the review, provided that the Tribal Court may waive this requirement for good cause

shown. Fees charged for preparation of the record, and all Court costs shall be taxed as costs of the removal action.

Each party to the judicial review shall be entitled to a copy of the record sent to the Court Clerk.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 610. Scope of Review

To the extent necessary to decision and when presented, the Tribal Court shall decide all relevant questions of law, and interpret any necessary constitutional or statutory provisions necessary for resolution of the action. The Court shall:

- (a) Compel action unlawfully withheld or unreasonably delayed; and
- (b) Hold unlawful and set aside action, findings, conclusions, and orders found to be:
 - (1) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;
 - (2) contrary to constitutional right, power, privilege, or immunity;
 - (3) in excess of constitutional or statutory jurisdiction, authority, or limitations, or without constitutional or statutory right;
 - (4) without observance of procedure required by law;
 - (5) unsupported by substantial evidence.

In making the foregoing determinations, the Court shall review the whole record or those parts of it cited by a party, and shall take due account of the rule of harmless error.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)

Section 611. Powers of Court not Diminished

Nothing herein contained shall diminish or otherwise abridge the power or authority of the Tribal Court to take jurisdiction of or enter any order in any matter relating to this subject matter which it would otherwise be competent to address.

(History: PUBLIC LAW #KT 90-14, February 6, 1990)