

## 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, as authorized by the Constitution under Article IV, Section 2 may remove from office a Council Member.

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 Council member 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 Council member 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 provision of Article IV, Section 2 of the Constitution shall be implemented into the Colville Tribal Law and Order Code and given substance by this Chapter.

### 1-8-3 Definitions

(a) "Code" means for the purpose of this Chapter, the Council's Code of Professional Responsibility.

(b) "Rules Committee" means the standing Tribal Government Committee of the Colville Business Council designated by the Council to enforce this Chapter and composed of every member of the Council.

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

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

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

(f) "Malfeasance" means the commission (by a public official) of a wrongful or unlawful act involving or affecting the performance of one's duties.

(g) "Misfeasance" means the performance of a lawful action in an illegal or improper manner, specifically when the performance of an official duty was done in an improper or unlawful manner or with an improper or corrupt motive.

(h) "Members of Council" means any current member of the Colville Business Council as established by the Tribal Constitution.

(i) "Quorum" means five members of the Tribal Government Committee who must be present in order for that Committee majority to transact any business related to this Chapter. When applicable to the full Business Council, a quorum is eight members pursuant to Article II, Section 2 of the Constitution.

(k) "Suspend" means to remove a Council member from office for a temporary period of time.

(l) "Unprofessional conduct" means any conduct which constitutes a violation of any constitutional provision, statute, or rule of the Council prescribing standards of conduct for Council Members.

### 1-8-4 Recusal

Any Rules Committee member who is the subject of an ethics or rules complaint or who is closely related to the complainant must recuse him or herself.

**1-8-5**      **Jurisdiction of Committee**

The jurisdiction of the Rules Committee created by this Chapter shall be strictly limited to the consideration of the conduct of the members of the Council.

**1-8-6**      **Affidavit To Be Filed By Members**

Each Council Member shall within thirty (30) 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 such membership on the Committee.

**1-8-7**      **Meeting of Rules Committee**

The Rules Committee may meet as frequently as it deems necessary to enforce this Chapter.

**1-8-8**      **Powers, Duties and Functions of Committee**

The Rules Committee shall have the following powers, duties and functions:

(a) Propose amendments and revisions to the Business Council Code of Professional Responsibility enacted by this Chapter.

(b) To recommend other legislation and other action relating to legislative professional responsibility.

(c) Develop or issue advisory opinions to systematically establish ethical criteria for the performance of Council members' duties and to guide the Committee in making future decisions.

(d) To issue advisory opinions pursuant to subsection (c).

(e) To provide a continuing program of education, assistance, and information to Council members with regard to Council professional responsibility.

(f) To make such rules for its own functions and exercise such powers as may be appropriate for the discharge of the responsibilities of the Committee not in conflict with this Chapter.

(g) Investigate possible unprofessional conduct by Council Member(s) and report to full Business Council the results of any investigation of possible unprofessional conduct by a Council Member(s).

(h) To make recommendations to the Business Council of any actions deemed appropriate by the Rules Committee resulting from its investigations.

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

**1-8-9**      **Advisory Opinions**

(a) In all written requests for advice and a reply, the identities of all persons mentioned are confidential and shall not be made public, unless done so by the requestor.

(b) The request should state each question upon which the opinion is desired, present all relevant facts, be as specific as possible, identify the names of all parties that are pertinent to the question(s), and include references to pertinent tribal law known to the requestor.

(c) A request posed by an outside attorney on a client's behalf should also set forth: A tentative conclusion upon each question presented, the reasoning upon which that conclusion is based, and all relevant statutory provisions, case law, former advisory opinion when applicable, and the authorities, whether or not they support the tentative conclusion concerning the questions presented.

(d) Requests for advisory opinions may be made by a Council Member, an employee of the Tribes, any person doing business with the Tribes, or an enrolled tribal member. A written request for an advisory opinion concerning specific conduct must be signed and supply such information as the Rules Committee requires to enable it to issue the opinion.

- (e) Upon receipt, requests shall be assigned a case number. Case numbers shall note the year of filing.
- (f) Within thirty (30) days of the receipt of a request, unless delay is unavoidable, the Committee shall:
  - (1) Issue a written advisory opinion; or
  - (2) Notify the person requesting such opinion that the request is beyond the Committees' jurisdiction; or
  - (3) That there are insufficient facts upon which an opinion can be based; or
  - (4) That the request is frivolous; or
  - (5) That the request is made for the purpose of harassment.
- (g) Periodically, a summary of an advisory opinion may be published after making sufficient alterations to prevent the identification of all persons mentioned and shall be used as a guide for the Rules Committee in future matters.

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

**COUNCIL MEMBERS RESPONSIBILITY – STANDARDS**

**1-8-20 Business Council Code of Professional Responsibility**

In order to maintain Council integrity and secure the public interest the following Code of Professional Responsibility is adopted for Council Members:

- (a) Actions, which destroy independence of judgment as a Council member. A Council Member 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 his or her immediate family, or for an organization with which he or she is associated;
  - (2) Vote on or influence legislation in Committee session or Council session, where the Council Member has a personal or family interest which is in conflict with the proper discharge of Council duties;
  - (3) Accept any gratuity or compensation for services rendered in connection with Council employment other than Council salary;
  - (4) Ask for, receive or agree to receive anything of value upon any understanding that the Council Member's vote, opinion, judgment, or action will be influenced thereby;
  - (5) Solicit, receive or accept a gift, favor or service under circumstances where it could be reasonably inferred that such action would influence the Council Member on the discharge of Council duties, or was a reward;
  - (6) Accept any remuneration other than Council compensation for Council advice or assistance;
  - (7) 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 Council Member 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) Singularly or through others shall not use or attempt to use improper means to influence a tribal agency, board, commission, Tribal Court, the Administrative Law Judge, or department;
- (3) Represent any claimant for compensation in any claim placed before the Business Council;
- (4) Receive compensation for an appearance before a tribal agency, board, Commission, Tribal Court, Administrative Law Judge, or department as an expert witness;
- (5) 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.

(c) Actions, which constitute an abuse of official position or a violation of public trust. A Council member 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, or department involving services or property, unless the contract is made after full disclosure to the Colville Business Council 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 Rules Committee.

(d) Action, which constitute a violation of Tribal Constitutional provisions. A Council Member 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;
- (2) Neglect his or her duty or commit gross misconduct while in office;
- (3) Violate his or her oath of office or commit an act or acts of malfeasance, or an act or acts of misfeasance while in office;
- (4) Violate any provision prescribing standards of conduct for a Council Member contained in the Constitution and By-Laws of the Tribes or this Chapter while in office.

(e) Exception: A Council Member may use an official title or stationary in connection with a matter or proceeding before a tribal agency, board, commission, Tribal Court, Administrative Law Judge, or department, only if done without compensation, in connection with official legislative duties and not for personal or family reasons.

**1-8-21 through 1-8-29 RESERVED**

**COMPLAINTS—HOW FILED AND PROCESSED**

**1-8-30 Complaints**

(a) A complaint may be filed by a Council Member, an employee of the Tribes, any person doing business with the Tribes or its entities, or an enrolled tribal member. Complaints must be written, signed under oath and directed to the Chair of the Rules Committee.

(b) If the Rules Committee finds that the complaint is not within its jurisdiction; or is frivolous; or is made for the purpose of harassment; or that there are insufficient facts alleged which, if true, would support a finding of unethical conduct; it shall dismiss the complaint, so notify the complainant, the Council Member against whom allegations were made and the members of the Colville Business Council with a copy of the complaint and the Committee's reason for dismissal.

(c) As a threshold issue, the Rules Committee Chair shall determine if the complaint is within the Committee's jurisdiction and whether there are sufficient facts alleged which, if true, would support a finding of unethical conduct.

(d) If the Rules Committee finds that a complaint is within its jurisdiction and there are sufficient facts alleged which, if true, would support a finding of unethical conduct, the Rules Committee may begin an initial investigation. If no initial investigation is deemed necessary, the Rules Committee shall send a Notice to the complainant and the Council member charged, as set out in (f) below.

(e) Rules Committee investigations shall be closed to all persons other than the Committee members, a recording secretary and attorney, if requested, and those individuals orally requested or subpoenaed to provide testimony. The accused Council Member may not attend the initial investigation. The purpose of an initial investigation is to gather documents referenced in a complaint, including credit card receipts, purchase orders, contract documents, correspondence, travel records and other relevant documents, and to interview potential witnesses. At the close of an initial investigation, which shall last no more than sixty (60) days, the Rules Committee shall send a Notice to the complainant and the Council member charged.

(f) The Notice shall state that the Council Member(s) charged in the Complaint is entitled to appear before the Rules Committee and respond to the Complaint, at an Investigative Hearing, shall set the date for hearing in the matter, which date shall not be less than ten (10) days not more than forty-five (45) days from the date of the Notice, shall list the witnesses expected to testify at the hearing, and shall provide the Council Member with a copy of the Complaint and this Chapter.

(g) Any member of the Rules Committee shall be disqualified in any case involving an individual who such member cannot judge impartially and the member must recuse himself or herself from the matter.

(h) In the furtherance of the Rules Committee's investigations and hearing process, it shall be empowered at its discretion, to do the following:

(1) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the Rules Committee; any other codes or ordinances of the Colville Confederated Tribes notwithstanding.

(2) Administer oaths or affirmations.

(3) Examine witnesses and receive evidence.

(i) 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 Rules Committee, issue an order requiring such person to appear before the Rules Committee, 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 tribal official, tribal employee, or tribal member shall furnish to the Rules Committee any item or person's testimony designated as being necessary for the exercise of its functions, powers and duties.

(j) At any hearing after the close of the initial investigation, the Council Member accused shall have the right to put on evidence, to cross examine witnesses put on by the Rules Committee, and to make opening and closing statements.

(k) At any hearing, the Rules Committee may exclude testimony that is irrelevant, cumulative, or hearsay.

(l) At the conclusion of the investigative hearing, a written statement of findings of fact shall be prepared based upon evidence presented at the hearing.

(1) If the Rules Committee in its decision determines that the facts support a finding of unethical conduct, it shall include in its decision a recommendation for disciplinary action to the Colville Business Council, which may include but is not limited to:

(A) Reprimand;

(B) Censure;

- (C) Suspension;
- (D) A fine;
- (E) Expulsion;
- (F) Restitution, including forfeiture of any filing fees.

(2) The recommendation shall be reported out as an official Rules Committee action at an open, non-executive Special Session of the Colville Business Council. Provided, however, that the Council Member who is the subject of the investigation shall be provided a copy of the findings of fact and recommendation at least ten (10) days prior to said Special Session of the Colville Business Council. The other members of the Colville Business Council shall be provided copies of the findings of facts and recommendation at least three (3) working days before the Special Session.

(m) All decisions and actions taken by the Rules Committee under this section shall be published in the Tribal Tribune.

**1-8-31 Investigations**

(a) Initial criminal investigations under this Chapter shall be referred to and conducted by the Tribal Police. A violation of this Chapter which involves the criminal laws of the Tribes shall also be forwarded to the Prosecutor's Office for special prosecution proceedings.

(b) If the Tribal Police believes there is probable cause that a criminal violation of this Chapter, including misuse of authority, neglect of duty, or gross misconduct has occurred, a report shall be forwarded back with findings to the Rules Committee.

(c) If the Tribal Police find reason to believe that a non-criminal violation of this Chapter has occurred, a report shall be forwarded with the findings to the Rules Committee. The Rules Committee shall investigate all non-criminal matters, and may contract with any private investigative agency to accomplish this end.

**1-8-32 Unfounded Complaints—Sanctions**

(a) When the Committee has determined that no violation of this Chapter occurred, or a Complaint was brought frivolously for harassment purposes, the Committee shall so state in writing the reason for the Committee's decision. A copy of the decision shall be provided to the complainant, the accused, and to the Business Council within five (5) days.

(b) The findings shall be reported out as an official Rules Committee action at an open, non-executive Special or Regular Session of the Colville Business Council. Provided, however, that the complainant and the Council Member who is the subject of the frivolous Complaint must be provided a copy of the findings at least five (5) days prior to said Special or Regular Session and that the Business Council is provided copies of the findings at least three (3) working days before the Special or Regular Session.

(c) Any individual found to have filed a frivolous Complaint, shall be required to post a \$200.00 bond if filing again within the same year.

(d) If a second Complaint filed is determined to be frivolous, the individual shall forfeit the bond and be prohibited from filing for one year from the date of receipt of the second Complaint and be subject to harassment charges pursuant to the Tribal Law and Order Code.

**1-8-33 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) To the extent that the Constitution and By-Laws do not completely address every issue related to the removal of a Council person from office, the following procedures will be utilized at any session of the Council convened for the purpose of this Chapter:

- (1) The term "majority vote" as set out in Article IV, Section 2 of the Constitution shall mean an affirmative vote of at least eight (8) Council Members.

(2) At any session where a Council Member is subject to ethics charges and potential removal, every Council Member present shall have the right to vote, without regard to potential or real conflicts.

(3) Every Council Member present except the Chair shall either vote yes or not on the matter. The Chair shall vote in the event of a tie. Abstentions shall not be allowed, and if made, shall be considered a neglect of duty.

(4) The Chair shall not recognize any motion to adjourn the Council until a vote on the matter has been had. No ethics matter may be tabled once it has been duly brought before the Council.

(5) It shall be considered a neglect of duty if a Council Member could have attended the session where an ethics matter is to be considered, but fails to do so.

(6) Any Council Member who can not otherwise attend a session for an ethics matter may appear telephonically.

**1-8-34**     **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.

**1-8-35**     **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.

**1-8-36**     **Effective Date**

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

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

## 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 Council Member 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 Council Member, 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)