

**SOUTHERN UTE INDIAN TRIBAL CODE**

**TITLE 19**

**ETHICS CODE**

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**TITLE 19**  
**SOUTHERN UTE INDIAN TRIBAL CODE**  
**ETHICS CODE**

**Article 1. GENERAL PROVISIONS**

**19-1-101. Title.** This code shall be known as the Southern Ute Indian Tribal Code of Ethics.

**19-1-102. Purpose.** The purpose of the Code of Ethics shall be to require the highest standards of ethical conduct of all elected and appointed tribal officials, including members of tribal boards, committees and commissions, while providing a means to hold such officials accountable for their actions in performing their duties and responsibilities. It shall be the further purpose of the Code of Ethics to protect the Tribe from improper influences, conflicts of interest and improprieties and to ensure that the interest of the Tribe is placed above the personal and economic interests of tribal officials.

**19-1-103. General Policy.** All tribal officials shall:

- (1) Uphold the Constitution, laws, policies, rules and regulations of the Southern Ute Indian Tribe.
- (2) Preserve the honesty and integrity of Southern Ute Indian Tribe.
- (3) Adhere to this Code of Ethics.
- (4) Report any alleged or potentially unethical conduct on the part of fellow tribal officials to the Ethics Office in a timely manner.

**19-1-104. Definitions.**

- (1) **Accountability.** State of being responsible for one's actions.
- (2) **Administrative Hearing.** Proceedings, which are less formal than court proceedings, but which employ rules of procedure and observe due process.
- (3) **Advisory Opinion.** An interpretation of the Code of Ethics stating whether the Ethics Commission would rule on a matter if a contemplated action were taken, including whether a particular matter may be subject to the Code of Ethics.
- (4) **Appointed Tribal Official.** An individual appointed to an office, board, committee, or commission by the Tribal Council or the Tribal Chairperson, pursuant to the Tribal Constitution, or a member of a tribal office, board,

committee or commission whose bylaws are subject to approval by the Tribal Council.

- (5) **Bad Faith.** Dishonesty of belief or purpose; for example, the filing of a complaint without factual basis in order to harass, annoy or intimidate another.
- (6) **Business.** Investment of capital, labor or management in any undertaking, whether for profit or not for profit.
- (7) **Code.** The Code of Ethics of the Southern Ute Indian Tribe.
- (8) **Commission.** The Ethics Commission of the Southern Ute Indian Tribe.
- (9) **Complaint.** The filing of allegations of unethical conduct against an appointed or elected official.
- (10) **Conduct.** Personal or official behavior or action, or failure to act.
- (11) **Conflict of Interest.** A situation in which a tribal official's personal, family, or economic interest may affect that person's official decisions or actions on behalf of the Tribe. A conflict of interest arises when a tribal official in his or her official capacity takes action on matters in which there is a personal, family, monetary or proprietary interest or bias. The interest of the tribal membership becomes secondary to the official's personal or family interest.
- (12) **Constitution.** The Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation.
- (13) **Days.** Unless otherwise specified herein, days shall mean calendar days.
- (14) **Director.** The Director of the Ethics Office.
- (15) **Due Process.** Fundamental rights, such as the right to notice of proceedings and the opportunity to be heard, guaranteed by the Tribal Constitution, tribal law, the Indian Civil Rights Act and other applicable law.
- (16) **Economic Interest.** Any ownership or investment held by a tribal official, or immediate family member of the tribal official in any business.
- (17) **Elected Tribal Official.** A person elected to a tribal office in accordance with the Tribal Constitution and the Election Code. This term shall also include candidates for election to a tribal office who have filed a Statement of Intention pursuant to the Election Code.

- (18) **Family or Immediate Family.** A spouse, child, brother, sister, parent, step-child, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, grandparent, great-grandparent, or grandchild.
- (19) **Favor.** Conferring a benefit with the understanding that a benefit, special consideration or special treatment will be provided in return.
- (20) **Favoritism.** Preference or selection based on friendship or subjective factors other than merit.
- (21) **Findings.** The result of the deliberations based on the evidence and testimony presented during an administrative hearing.
- (22) **Honorarium.** Payment given for services for which fees are not legally or usually required.
- (23) **Gift.** A voluntary transfer of property to another without payment or other consideration.
- (24) **Intimidate.** To frighten or threaten someone, in order to persuade the person to do or not to do something.
- (25) **Nepotism.** Appointing, hiring, causing, or influencing the hiring of immediate family members in tribal employment or directly supervising such immediate family members.
- (26) **Official Business.** Conduct and activities performed as part of, or an extension of, regular official responsibilities, including during authorized training and travel. Official business includes that time used to travel under an official travel authorization from the time and point of departure to the travel location, all stops and points in between, until the official's return from the destination.
- (27) **Personal Knowledge.** Personal knowledge means knowledge of a circumstance or fact gained through firsthand observation or experience.
- (28) **Retaliate.** To take a punitive action without just or reasonable cause as a response to, or revenge for another lawful action.
- (29) **Sexual Harassment.** Uninvited and unwelcome verbal or physical behavior, including the use of images or electronic communications, of a sexual nature, especially by a person in authority toward a subordinate, including employees, students or other officials.
- (30) **Solicitation.** Any request which is meant to influence the giving of something of value based on the relationship of the parties.

- (31) **Tribe.** The Southern Ute Indian Tribe.
- (32) **Tribal Council.** The Tribe's governing body, the Southern Ute Indian Tribal Council.
- (33) **Tribal Employee.** Any employee of the Tribe.
- (34) **Tribal Office.** Positions created by the Constitution of the Southern Ute Indian Tribe.
- (35) **Tribal Official.** An elected or appointed official of the Tribe.
- (36) **Undue Influence.** The improper use of power or trust in a way that deprives a person of free will and induces the person to act in a certain manner.

## **Article 2. STANDARDS OF CONDUCT**

- 19-2-101. Abuse of Authority.** No tribal official shall use or attempt to use his or her authority or position to influence the consideration of any business agreement or to interfere with the administration of the Tribe pursuant to established policies and procedures, including, without limitation, applicable personnel policies and procedures. No tribal official shall take any action or make any decisions on behalf of the Tribe unless he or she is so authorized.
- 19-2-102. Abstention from Official Action.** No tribal official shall participate in debate or vote on any matter in which he or she may have a personal, family, or economic interest; provided, however, a Tribal Council member, but no other official, may vote in such circumstances with the approval of other Tribal Council members in accordance with the Tribal Constitution. A tribal official shall not sponsor or influence in any way official acts where the tribal official has a conflict of interest.
- 19-2-103. Bad Faith.** It shall be a violation of this Code for any person to file an ethics complaint in bad faith and/or without a good faith belief that a violation has occurred. An investigation and determination by the Commission that an ethics complaint has been filed in bad faith and/or without such a good faith belief shall be admissible in any related civil proceeding. The prevailing party in any related civil proceeding shall be entitled to an award of reasonable attorney's fees from the non-prevailing party. In the case of a tribal employee, including an employee of any tribal entity or business enterprise, filing a complaint in bad faith may constitute grounds for disciplinary action, up to and including termination of his or her employment. The Commission may also impose an appropriate monetary penalty against any person it finds to have violated this provision.

- 19-2-104. Conduct while on Official Business.** While acting or travelling on official business, no tribal official shall become under the influence of alcohol or any controlled substances, appear in public in a state of intoxication or impairment, or engage in any other conduct interfering with the official's ability to perform their official duties.
- 19-2-105. Confidential Information.** No tribal official shall disclose confidential information obtained in the course of conducting tribal business without proper authorization. No tribal official shall use confidential information for personal gain or to damage a person's reputation or for political advancement.
- 19-2-106. Conflict of Interest.** Except as provided in the Constitution, no tribal official shall engage in any activity with the Tribe, either directly or indirectly, which is inconsistent with the performance of his or her official duties or where the individual or his or her immediate family may stand to profit by engaging in such activity.
- 19-2-107. Duty to Report Violations.** All tribal officials have a duty to report, in a timely manner, any violation of this Code of which they have personal knowledge and it shall be a violation of this Code for a tribal official to fail to make such a report.
- 19-2-108. False Claims.** No tribal official shall knowingly make, use or cause to be made any false or fraudulent claim, statement or record to obtain payment from the Tribe. This shall include, but not be limited to, travel requests, travel expense reports, purchase orders, requisitions, time sheets, contracts and reimbursement requests.
- 19-2-109. Gifts, Loans, Favors and Other Benefits.**
- (1) No tribal official shall directly or indirectly accept any gifts, honorarium, loans, favors or anything of value for his or her personal use or benefit which could reasonably be construed as influencing the performance of official acts. Gifts, loans, favors or benefits given to immediate family members of tribal officials with the intent to influence official acts are also prohibited.
  - (2) Gifts from personal friends and relatives, gifts given in connection with tribal social events or in a traditional or ceremonial context, and gifts of *de minimis* or negligible value are permissible so long as they do not influence the performance of official acts.
  - (3) Offers of prohibited gifts, honorariums, loans, favors or benefits from persons or organizations seeking official action from the Tribe shall be immediately reported to the Ethics Office by any tribal official receiving such an offer, and the Ethics Office shall document the report, including the date, name of the person or organization involved and what was offered. The Ethics Office shall immediately notify the person or organization who had made the offer that tribal officials are not allowed to accept such offers and that acceptance would constitute a violation of this Code by the tribal official involved.

- 19-2-110. Impeding Governmental Efficiency.** No tribal official shall attempt, directly or indirectly, to obstruct the official functions of the Tribe, its enterprises, entities, boards, committees or commissions, including the functions of the Commission.
- 19-2-111. Intimidation.** No tribal official shall improperly or unduly intimidate or attempt to intimidate any person, including the use of unreasonable implied or direct threats.
- 19-2-112. Misuse of Funds and Property.** No tribal official shall use tribal property, tribal credit cards, or any funds or grants, which are administered or controlled by the Tribe, for any purposes other than those authorized by the Tribal Council or funding source.
- 19-2-113. Misuse of Staff.** No tribal official shall cause or permit any tribal employee to conduct political or personal business on behalf of the tribal official during work hours.
- 19-2-114. Nepotism.** No tribal official shall hire, promote, appoint, recommend for appointment or otherwise cause the employment with the Tribe of any immediate family member. Appointment of non-elective officials and employees of the executive department of the tribal government by the Tribal Chairman, pursuant to Article X, Section 1(a) of the Tribal Constitution, is specifically exempted from this provision.
- 19-2-115. Political and Campaign Activity.** No tribal official shall use his or her position to influence anyone's vote, to interfere with the voting privileges of any person, or to coerce or attempt to coerce any person into making a political contribution or commitment regarding the person's vote in return for employment, favors or other preferential treatment. No tribal official, or any agent of a tribal official, may give anything of more than minimal value to a voter, if done with the expectation that the recipient will cast a vote in a manner that directly or indirectly benefits the tribal official.
- 19-2-116. Preferential Treatment.** No tribal official shall give preferential treatment to any person, group or organization, because of relationship or friendship, in return for personal gain or for political advancement.
- 19-2-117. Private Gain.** No tribal official shall use or attempt to use his or her official capacity to place his or her personal, family, or economic interest before that of the Tribe. Nor shall any tribal official take or attempt to take multiple reimbursements from the Tribe for the same expenditure.
- 19-2-118. Public Service in a Non-Tribal Appointed or Elected Office.** A tribal official may serve in a local, state or federal elected or appointed position while serving in his or her official capacity with the Tribe, provided such service does not constitute a conflict of interest.

- 19-2-119. Retaliation.** It shall be a violation of this Code for any tribal official to retaliate against a person.
- 19-2-120. Sexual Harassment.** No tribal official shall engage in sexual harassment of any fellow official, tribal employee or any other person.
- 19-2-121. Solicitation.** No tribal official shall solicit gifts, loans, favors or anything of value from any person or organization seeking official action from or doing business with the Tribe or has any personal or economic interests which may substantially affect the performance of his or her official duties.
- 19-2-122. Unauthorized Compensation.** No tribal official shall solicit or accept any form of compensation, monetary or otherwise, for performing his or her duties of office in excess of authorized compensation.

### **Article 3. ETHICS COMMISSION**

- 19-3-101 Establishment.** There is hereby established the Southern Ute Indian Ethics Commission.
- 19-3-102 Purposes.** The purposes of the Commission are as follows:
- (1) To ensure that tribal officials are held to the highest standards of ethical conduct.
  - (2) To provide for fair, honest and effective tribal government through review and recommendation of legislation, rules and standards that promote ethical conduct by tribal officials.
- 19-3-103 Membership.**
- (1) The Commission shall be composed of three members appointed by the Tribal Council. Alternates shall be appointed for all positions to allow for unavailability due to illness or other unforeseen events and removal or disqualification of a member during the pendency of Commission proceedings pursuant to sections 19-3-105 or 106, respectively.
  - (2) A Chairperson of the Commission shall be selected from among the Commission members participating in a particular matter before the Commission. The Chairperson shall preside over the meetings.
  - (3) Members of the Commission shall serve staggered 3-year terms; provided, however, each member shall continue to serve until reappointed or until a successor is appointed.

- (4) Three Commission members or alternates must be present to constitute a quorum of the Commission.

**19-3-104 Qualifications for Commission Members.**

- (1) Persons appointed to serve as Commission Members must take an oath of office and be sworn into his or her position on the Commission. In addition, persons appointed to serve on the Commission must meet all of the following qualifications:
  - (a) A member of the Tribe at least 18 years of age or older;
  - (b) Lives within distance of the Tribal Headquarters in Ignacio to meet the definition of Local Indian as defined by the Tribe's TERO law;
  - (c) A reputation for fairness and impartiality;
  - (d) Familiarity with tribal government;
  - (e) Ability to maintain confidentiality about Commission matters;
  - (f) Good character, active, and conversant with proven responsibility in tribal community affairs; and,
  - (g) Satisfactory completion of a background investigation for criminal history showing no convictions or guilty pleas for felonies or any misdemeanor involving dishonesty.
- (2) Current members of the Tribal Council shall not be eligible to serve on the Commission.

**19-3-105 Removal.** Upon recommendation of the Commission, a Commission member may be removed from the Commission by a majority vote of the Tribal Council for neglect of duty, failure to attend three consecutive meetings without just cause, failure to maintain eligibility requirements or other good cause demonstrating a member's unfitness for continued membership.

**19-3-106 Disqualification of Commission Members.** Any Commission member who believes he or she has or may have a conflict of interest in a matter before the Commission shall disclose the conflict, and the Commission may exercise its discretion to disqualify that member from participating in such proceedings and substitute an alternate to act in his or her place. In addition, the Commission may exercise such discretion upon the motion or request of a party involved in a Commission proceeding to disqualify a Commission member based on a conflict of interest.

**19-3-107 Powers.** The Commission shall have all the powers necessary and proper to carry out the purposes set forth in this Code and the authority to perform the following:

- (1) To participate in administrative hearings pursuant to Article 6 of this Code, including examining witnesses and documents.
- (2) To recommend revisions to this Code to maintain the highest standards of ethical conduct among tribal officials.
- (3) To perform the duties and responsibilities necessary to implement the provisions of this Code.
- (4) To promulgate such rules as are necessary to carry out its duties and responsibilities.
- (5) To issue subpoenas to compel attendance of witnesses or to produce any documents relevant to the matter before the Commission.
- (6) To hold in contempt any person found disobeying any lawful order or direction of the Commission.
- (7) To seek enforcement of Commission orders through the Tribal Court.
- (8) To impose appropriate penalties when it determines that a complaint was filed in violation of § 19-2-103. Such penalties may provide for reimbursement to the Tribe and the respondent for the costs incurred in resolving a complaint that is filed in violation of § 19-2-103.

**19-3-108 Duties and Responsibilities.** The Commission shall have the following specific duties and responsibilities:

- (1) To protect the interests of the tribal members in fair, honest and efficient tribal government.
- (2) To recommend regulations to implement this Code to Tribal Council for adoption.
- (3) To take all appropriate measures to protect the confidentiality of statements, records, documents and other information disclosed in compliance with this Code.
- (4) To provide written advisory opinions to assist a tribal official upon written request of that official.
- (5) To receive and review complaints filed with the Ethics Office in accordance with this Code.

- (6) To participate in administrative hearings on any alleged violation of or non-compliance with this Code, whether or not specifically raised by the Complaint, in accordance with established rules of procedure.
- (7) To disqualify themselves from proceedings involving immediate family members and in other cases involving a conflict of interest.

**19-3-109 Amendments.** All rules and regulations adopted by the Commission may be amended by the Commission, subject to the approval of the Tribal Council.

**19-3-110 Hearings.**

- (1) Hearings may be scheduled as deemed necessary by the Commission.
- (2) Any hearing shall be conducted in accordance with the hearing procedures outlined in this Code.
- (3) As set forth in 19-3-106, a Commission member who has or may have a conflict of interest in any matter to be heard before the Commission shall be disqualified from participating in those Commission proceedings and voting on such matters.

**Article 4. ETHICS OFFICE**

**19-4-101 Establishment.** There is hereby established the Ethics Office of the Tribe to provide administrative support to the Commission in implementing, monitoring, and enforcing this Code.

**19-4-102 Responsibilities.** The Ethics Office shall have the following responsibilities:

- (1) To maintain complete and current written records of resolutions, rules, regulations, decisions, opinions and other official documents relating to this Code and to make available such records as required.
- (2) To protect the confidentiality of the records and information maintained in the Ethics Office.
- (3) To carry out its purpose in accordance with this Code.

**19-4-103 Personnel and Organization.**

- (1) The Ethics Office shall consist of a Director and authorized administrative staff, who shall be selected in accordance with applicable policies and procedures. The Director may also be hired pursuant to a contract.

- (2) Investigative services and hearing officers to conduct administrative hearings shall be contracted for on an as-needed basis, and shall be provided by a qualified entity or individual whose prior or current relationship, if any, with the Tribe poses no conflict of interest.

**19-4-104 Duties of the Director.** In accordance with the directives of the Commission, the Director shall have the following duties:

- (1) To provide recommendations to the Commission concerning rules and regulations necessary to implement this Code.
- (2) To compile and maintain the written advisory opinions issued by the Commission.
- (3) To receive, review, and refer complaints alleging conduct in violation of this Code for investigation.
- (4) To assemble files and prepare for hearings concerning allegations of non-compliance or violation.
- (5) To make written recommendations to the Commission concerning the disposition of complaints as required herein.
- (6) To set administrative hearings on complaints over which the Commission has jurisdiction and for which the evidence appears sufficient to support the allegations.
- (7) To maintain a complete record of all hearings, including all testimony, documents and other evidence presented.
- (8) To develop and administer a budget which is subject to approval by the Tribal Council.

## **Article 5. COMPLAINT AND INVESTIGATIVE PROCEDURES**

**19-5-101 Filing of Complaints.**

- (1) Any person may file an ethics complaint alleging unethical conduct on the part of a tribal official; however, if a complaint is filed by a member of the Commission, that member may not participate in any proceedings regarding that complaint.
- (2) All complaints of alleged unethical conduct shall be filed with the Ethics Office and referred to the Director without delay.

**19-5-102 Contents of Complaints.** All complaints filed shall:

- (1) Be in writing, signed and verified by the complainant on a form approved by the Commission.
- (2) State the name and address of the complainant and the name of the respondent, as well as his or her elected or appointed position, if known.
- (3) Provide a statement of facts sufficient to support the allegations being made; reference to Code provision(s) violated may be included.
- (4) Be signed by the person who received the complaint on behalf of the Ethics Office and be date stamped as received.

**19-5-103 Limitations Period.** No complaint shall be considered that is filed more than 1 year after discovery of the actions alleged to constitute a violation of the Standards of Conduct stated in Article 2 of this Code.

**19-5-104 Procedure Upon Receipt of Complaint.**

- (1) Within 10 days of receipt, the Ethics Office shall notify the respondent by personal service or by certified mail that an ethics complaint has been filed against him or her. A copy of the complaint shall be included with the notice together with any supporting documents submitted. The notice shall also inform the respondent that, if he or she wishes to file a response, which may include an allegation of bad faith as defined herein, the response must be filed within 30 days of receipt of notice of the complaint by the respondent.
- (2) If a certified mail notice is returned by the post office unclaimed or refused, notice shall be accomplished by personal service on the respondent.
- (3) If personal service cannot be accomplished and certified mail has been returned unclaimed or refused, notice by publication shall be made in the Southern Ute Drum. Publication shall be made in a newspaper of general circulation in the area of respondent's last known address, if that address is not within the exterior boundaries of the Reservation.
- (4) Once the respondent has been notified of the complaint, the Ethics Office shall forward the complaint and supporting documents to the ethics investigator, who shall initiate an investigation of the alleged ethics violation.
- (5) Within 10 days of receipt, the Ethics Office shall forward the complaint and supporting documents to the Ethics Commission for a preliminary review.

**19-5-105 Investigation Process.**

- (1) Each investigation shall include the following:
  - (a) An interview of the complainant and all witnesses who may have information concerning the allegations.
  - (b) Review of the respondent's written response, if any.
  - (c) Receipt of any additional evidence from the complainant or complainant's witnesses relevant to the complaint.
  - (d) An interview of the respondent if he or she wishes to provide information.
  - (e) Receipt of any additional evidence the respondent or respondent's witnesses may wish to provide.
- (2) In the event the ethics investigator is unable to obtain relevant documents due to the refusal of any person, except the respondent, a subpoena may be issued by the Chairperson of the Commission.
- (3) Any investigation should be undertaken and completed without delay and as expeditiously as possible. Absent extraordinary circumstances that prevent the ethics investigator from completing timely investigations, an investigation may not extend beyond 90 days following the receipt of a complaint hereunder. The Director may grant a reasonable extension of the investigation period if there are circumstances that prevent completion of the investigation within the 90 day period.
- (4) Within not more than 10 days after completion of the investigation, the investigator shall prepare an investigative summary. The Director shall review the summary with the investigator to determine if there is sufficient evidence, showing that it is more probable than not that there has been a violation of a provision of the Standards of Conduct, to recommend an administrative hearing or, in the event there is insufficient evidence or a lack of personal or subject matter jurisdiction, to recommend dismissal of the complaint.

**19-5-106 Report to the Ethics Commission.**

- (1) Upon review of the investigative summary and consultation with the investigator and no later than 10 days after receipt of the investigative summary, the Director shall prepare and submit a written report to the Commission, which shall include the investigative summary prepared by the investigator and, for each violation of the Ethics Code alleged in the complaint, shall recommend to the Commission either that a hearing be scheduled or that any individual violation alleged in the complaint or the entire complaint be dismissed.

- (2) The Commission shall convene within 10 days after receipt of the Director's written report and, after review and discussion of the written report, may either dismiss any individual violation alleged in the complaint or the entire complaint or schedule a hearing.
- (3) If the Commission determines to dismiss a complaint or individual violations alleged in the complaint, an Order of Dismissal, which shall be considered a final Commission decision, shall be served upon the respondent and the complainant by personal service by a peace officer, an authorized process server, or by certified mail within 10 days of such determination.
- (4) In the event that an entire complaint is dismissed by the Commission, the case file, with the exception of the Order of Dismissal, will be destroyed if no appeal to the Tribal Court is filed within the 15-day period allowed for appeal pursuant to this Code.
- (5) If, in dismissing a complaint, the Commission finds that the complaint was filed in bad faith but the Commission lacks jurisdiction to proceed to a hearing regarding the bad faith, it shall include the evidence in support of its findings in the Order of Dismissal, which evidence may be admissible in a separate civil or disciplinary proceeding.
- (6) If the Commission determines that there is probable cause to believe that an ethics violation has occurred, the Commission shall schedule a hearing to take place within 60 days and shall follow the Administrative Hearing Procedures set forth in Article 6. A decision by the Commission to proceed to a hearing shall not be considered a final Commission decision for purposes of appeal.

**19-5-107 Resolution of Complaint Without the Necessity of Hearing.**

- (1) After a decision by the Commission to proceed to hearing, the Director may discuss the potential resolution of the complaint with the respondent and, when appropriate, with the complainant. Such resolution, in the nature of a negotiated settlement, may include all matters necessary to an appropriate disposition of the matter.
- (2) Any such negotiated resolution shall be put in writing and shall be subject to the approval of the Commission.
- (3) If a respondent fails, without just cause and prior written authorization of the Commission, to perform any terms of a negotiated resolution, the negotiated resolution shall be deemed to be vacated and the matter will be set for hearing not more than 60 days after the Commission learns of such non-compliance.

## **Article 6. ADMINISTRATIVE HEARING PROCEDURES**

### **19-6-101 General.**

- (1) Administrative hearings before the Commission shall be held in accordance with the procedures provided herein.
- (2) A qualified hearing officer on contract with the Tribe shall conduct hearings, rule on procedural motions and generally preside over hearings before the Commission. The hearing officer shall administer oaths and swear-in witnesses, resolve motions and objections of the parties, and generally ensure that the rights of the parties to due process and a fair hearing are protected.
- (3) The Commission shall hear those matters brought before them for determination and may have the assistance of legal counsel during such hearings.
- (4) The Ethics Office shall have the right, in its discretion, to call and examine witnesses, present exhibits to the hearing, and, at the conclusion of the hearing, present a closing argument.

**19-6-102 Ex Parte Communication with Commission Members.** Commission members shall not engage in any oral or written communication regarding the complaint with any party to a complaint, any party representative, or any witness or potential witness. In the event such communication occurs or in the event a party, party representative, witness, or potential witness attempts to communicate with a Commission Member, then that event shall be reported to the Chairperson of the Commission, in writing, so that necessary and appropriate measures may be taken, including disqualification from further participation in the proceedings, if appropriate. In the event Commission members are disqualified to hear a complaint, qualified alternate members shall hear the matter, based on their ability to serve.

### **19-6-103 Notice of Hearing.**

- (1) Notice of the hearing shall be provided to the complainant and respondent by the Director, by certified mail or personal service, not less than 20 days prior to the scheduled hearing date. If personal service cannot be accomplished and certified mail has been returned unclaimed or refused, notice by publication shall be made in the Southern Ute Drum. Publication shall also be made in a newspaper of general circulation in the area of respondent's last known address, if that address is not within the exterior boundaries of the Reservation.
- (2) The Notice of Hearing shall include, at a minimum, the following:
  - (a) Names of parties and complaint number.

- (b) Time, date and place of hearing.
  - (c) Subject matter of scheduled hearing.
  - (d) Citation to Code provisions under which the hearing is being conducted.
  - (e) Notice of default for failure to appear.
  - (f) Notice of each party's right to have legal counsel at the hearing.
  - (g) Names of witnesses who may be called by the complainant.
  - (h) If available, copies of any documents, including the investigative summary, which may be submitted as evidence by the Ethics Office as well as a list of any witnesses that the Ethics Office intends to call.
  - (i) A copy of this Code.
- (3) In addition to service upon the respondent and complainant, the Director shall ensure that the location, date and time of the hearing is published in the Southern Ute Drum as soon as practicable after the setting of the hearing date.

**19-6-104 Subpoenas.**

- (1) The Commission and each party shall have the right to have subpoenas issued by listing the names and addresses of such persons on Ethics Office forms and requesting that those persons be subpoenaed.
- (2) The Commission may issue subpoenas when necessary to compel the attendance of witnesses and to produce relevant documents. All subpoenas shall be signed by the Chairperson of the Commission.
- (3) All subpoenas shall be served by a peace officer or authorized process server in accordance with applicable law and at no expense to the parties.
- (4) Persons failing to obey Commission subpoenas shall be subject to contempt proceedings by the Commission or the Southern Ute Indian Tribal Court.

**19-6-105 Exchange of Witness Lists and Exhibits/ Preliminary Matters.**

- (1) Each party shall ensure that the Ethics Office and the other party receives a list of anticipated witnesses and copies of all documents that the party intends to present at the hearing. The Commission shall also provide each party with such a list and documents if not included with the Notice of Hearing. Such information shall be provided to the other party and the Ethics Office no less than 15 days prior to the scheduled hearing date and shall include sufficient

information to identify each witness and the issues about which he or she is anticipated to testify.

- (2) The hearing officer shall have discretion to exclude the testimony of any witness or the admission of any document not sufficiently disclosed to the Commission or the other party prior to the hearing.
- (3) Any and all preliminary issues, such as motions or stipulations, shall be presented to the hearing officer at least 10 days prior to the scheduled hearing and ruled on by the hearing officer at least 5 days prior to such hearing.

**19-6-106 Representation.** Each party may be represented by legal counsel or other representative of their choice at their own expense.

**19-6-107 Conduct of Hearings.**

- (1) All hearings shall be open to the tribal member public to observe, unless the Commission determines otherwise or that certain individuals, including witnesses, should be included or excluded. All records and documents contained in the hearing record shall be public, except for documents entitled to confidentiality under tribal or federal law or applicable policies and procedures.
- (2) The hearing officer shall initiate the hearing by calling the matter by complaint number and parties to the complaint and shall read the allegations of the complaint into the official record of the hearing.
- (3) The hearing officer shall preside over the hearing, administer oaths to any witnesses who will testify, and rule on all procedural matters related to the conduct of the hearing.
- (4) Following the initiation of the hearing, the hearing officer shall first allow the Ethics Office to call and question witnesses regarding the issues relevant to the complaint, after which time both the respondent and complainant shall also have the right to question such witnesses, subject to any objection(s) from the other party, which shall be ruled upon by the hearing officer.
- (5) Upon conclusion of the evidence presented by the Ethics Office, each party shall, in turn, be allowed the opportunity to present additional witnesses and evidence in support of their position. The inclusion of such evidence into the official record of the hearing shall be subject to objection(s) from the other party and determined by the hearing officer.
- (6) Witnesses shall be excluded from the hearing room until such time as they are called upon to testify. Each witness shall be sworn under oath by the hearing officer prior to testifying.

- (7) Although formal rules of procedure shall not be strictly followed, the hearing officer shall ensure that both parties are afforded the following rights:
  - (a) The opportunity to call witnesses and to question and cross-examine each witness called to testify.
  - (b) The opportunity to enter into the record of the hearing documentary or physical evidence relevant to the matter before the Commission.
  - (c) The opportunity to present closing statements in support of their positions, if they choose to do so, upon the conclusion of the testimony and receipt of evidence.
- (8) The hearing officer shall not require that strict rules of evidence be followed but shall ensure that due process is afforded under applicable tribal and federal law. The hearing officer may prohibit the presentation of evidence including documents and witnesses that a party has failed to disclose as required by § 19-6-105, or if the hearing officer determines such evidence to be irrelevant.
- (9) Following presentation of all the evidence, the deliberations of the Commission shall be conducted in private.

**19-6-108 Decisions of the Commission.**

- (1) The Commission shall determine, based on the record of the evidence from the hearing, whether clear and convincing evidence supports the allegations of the complaint.
- (2) Upon reaching a decision based on that standard, the Commission shall, within 10 days of the hearing, issue its findings of fact and legal conclusions in written form together with the penalties, if any, to be imposed in the event a violation has been found.
- (3) Service of the decision shall be made without delay upon the respondent and the complainant by personal service by a peace officer, an authorized process server, or by certified mail.

**19-6-109 Dismissal of Complaints.**

- (1) The Commission may, at any stage of the proceedings, dismiss any complaint upon a finding of any of the following:
  - (a) lack of personal or subject matter jurisdiction;
  - (b) lack of sufficient evidence; or

- (c) violations of due process.
- (2) The Commission may dismiss any complaint upon verified completion of a negotiated settlement pursuant to § 19-5-107 of this Code.
- (3) After completion of a preliminary review pursuant to § 19-5-104(5), the Commission may dismiss any complaint upon finding that the complaint fails to make sufficient allegations that, if proven, would support a finding of a violation of this Code by an appointed or elected official.
- (4) Service of an Order of Dismissal shall be made without delay upon the respondent and the complainant by personal service or by certified mail.
- (5) If, in dismissing a complaint, the Commission finds that the complaint was filed in bad faith but the Commission lacks jurisdiction to proceed to a hearing regarding the bad faith, it shall include the evidence in support of its findings in the Order of Dismissal, which evidence may be admissible in a separate civil or disciplinary proceeding.

**19-6-110 Default.** Where a respondent, after being properly notified of the hearing, does not appear for the hearing, the Commission shall hear the evidence and may enter a default against the respondent and proceed to impose penalties as prescribed in Article 7.

**19-6-111 Appeal to Tribal Court.**

- (1) The Ethics Office, the complainant, or the respondent may seek judicial review of a final Commission decision, which may include a request for judicial review of procedural rulings made by the hearing officer, by filing a written petition for review with the Tribal Court, within 15 days of receipt of such decision. The petition must state the grounds for seeking review. The Commission shall be represented by the Tribal Legal Department in any such appeal.
- (2) The Tribal Court may stay enforcement of the Commission's decision pending the resolution of any appeal filed hereunder.
- (3) Review by the Tribal Court shall be limited to the record made by the Commission, and the Tribal Court shall not substitute its judgment for that of the Commission as to any disputed finding of fact.
- (4) The Tribal Court may reverse a Commission decision and may remand the matter for an additional hearing if it finds that the decision is not supported by the record or if it finds a material error in procedure took place. The Tribal Court may reverse or modify a Commission decision if it finds an error of law or if it finds the decision to be arbitrary and capricious.

- (5) Unless the Tribal Court finds cause for reversing, remanding, or modifying the Commission's decision, it shall affirm the Commission's decision and enter an order directing its enforcement.
- (6) Upon presentation of relevant newly discovered evidence that could not have been presented at the prior hearing because it was not known, the Tribal Court may order the Commission to conduct a new hearing.
- (7) The decision of the Tribal Court shall be final and not subject to further appeal.

## **Article 7. PENALTIES**

### **19-7-101 Penalties.**

- (1) Upon a finding that there has been a violation of any provision of the Code by an appointed official, the Commission may issue notice of any or all of the following penalties:
  - (a) For any appointed tribal official, except those appointed to the executive department of the tribal government by the Chairman in accordance with Article X, Section 1(a) of the Tribe's Constitution:
    - (i) Issuance of a written reprimand which shall become a part of the person's permanent record;
    - (ii) Suspension from appointed tribal office, without pay, for a period of not less than 30 days and not to exceed 1 year;
    - (iii) Recommendation to the Tribal Council for removal from appointed tribal office; and/or
    - (iv) Disqualification to seek or hold appointed tribal office for a period not to exceed 5 years from the date of the finding of a violation.
  - (b) With regard to any tribal official appointed to the executive department of the tribal government by the Chairman in accordance with Article X, Section 1(a) of the Tribe's Constitution, a recommendation to the Tribal Chairman for disciplinary action, up to and including removal.
- (2) Upon a finding that there has been a violation of any provision of the Code by an elected tribal official, the Commission may impose any or all of the following penalties:
  - (a) Issuance of a written reprimand which shall become a part of the person's permanent record.

- (b) Recommendation to the Tribal Council that such person be disciplined or removed from office in accordance with Article V, Section 1, of the Constitution of the Southern Ute Indian Tribe and the Tribal Removal Ordinance.
- (3) Notice of any penalty issued by the Commission hereunder shall be issued to the parties as well as to the Tribal Council, Tribal Chairman, and/or any other appropriate entity as outlined herein or as determined by the Commission. The Commission may also require that the Tribal Council, Tribal Chairman or any other appropriate entity respond within a particular time frame to the Commission to document any action taken in accordance with the Commission's decision.
- (4) The Commission may publish notice of its decision or otherwise make publicly available its findings and recommendations.
- (5) Any penalty imposed may include appropriate conditions necessary for corrective action, as well as the payment of restitution, as determined by the Commission, and costs of the proceedings, including investigative costs.
- (6) Any tribal official who realized an economic benefit as a result of the violation shall also be liable to the Tribe for civil damages.

## **TITLE 19**

### **ETHICS CODE**

#### **History and Amendments<sup>1</sup>**

The Southern Ute Indian Tribe Code of Ethics adopted by Tribal Resolution No. 96-208 on November 5, 1996.

Tribal Council adopted amendments to §§ 19-3-106(7), 19-1-104(23), and 19-3-103(1) by Resolution No. 97-35 on February 25, 1997.

Resolution No. 2011-172 repealed and replaced prior versions of Ethics Code on July 26, 2011, approved by BIA on August 23, 2011.

Resolution 2017-41 on March 21, 2017 adopted amendments to Ethics Code, approved by the Bureau of Indian Affairs on June 15, 2017.

Resolution No. 2021-151 repealed and replaced prior versions of Title 19 with a reformatted Ethics Code for online publication approved by the Bureau of Indian Affairs on November 28, 2022.

Resolution No. 2023-079 authorized on-line publication of the 2021-151 Ethics Code and provided an effective date of May 25, 2023.

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<sup>1</sup> This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.