

ETHICS RULES OF PROCEDURE



EASTERN BAND OF CHEROKEE INDIANS
OFFICE OF INTERNAL AUDIT AND ETHICS

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SECTION E: ETHICS RULES OF PROCEDURE

E1 GENERAL RULES

E1.1 Purpose

These rules are adopted to establish the practice and procedures to be followed by the Audit and Ethics Committee, designated subcommittees, and the Office of Internal Audit and Ethics in fulfilling responsibilities as specified by Ordinance 152(2016), Cherokee Code Chapter 117-45.

E1.2 Authority to Adopt Rules

These rules are adopted under the authority granted to the Audit and Ethics Committee under Cherokee Code Chapter 117 Article V.

E1.3 Amendment to Rules

Rules of Procedure shall be reviewed as necessary but no less than annually. They may be amended at any regular meeting of the Audit and Ethics Committee by a majority vote of those present.

E1.4 Jurisdiction

The jurisdiction of the Audit and Ethics Committee regarding the enforcement of the Code of Ethics shall extend to any person required to comply.

E2 DEFINITIONS

Tribal officials. Any individual serving in an office of the Tribal government, including but not limited to any person:

- a) Holding an elective office, winning an election with a majority vote by enrolled members.
- b) Serving as a member of an authority, board, committee, commission, team or other similar body appointed by Tribal Council or the Executive Office; or
- c) Appointed by Tribal Council or the Executive Office to carry out actions, provide guidance, or assistance to the Tribal Council or the Executive Office.

Tribal resources. Refers to instruments belonging to, held by, or received by the EBCI utilized for the economic, social, and political development of the EBCI as a community; and the Tribal offices and programs of the EBCI. Such instruments may include but are not limited to the following:

- a) Land, physical property, and services owned, provided, distributed, administered or allocated by Tribal officials that have been paid for, subsidized, or otherwise acquired by the offices and agencies of the EBCI;
- b) Funds and other financial assets of the EBCI; and
- c) Other Tribal materials made available to Tribal officials while acting in an official capacity, which includes documentation, communications, and other records made available to a Tribal official.

Personal interest. Means any interest in which there exists a likelihood for direct or indirect gain of any kind, including, but not limited to, employment contracts, benefits, salaries, funding, or ownership or investment held by a Tribal official, employee, or immediate family member of Tribal officials.

Conflict of interest. A conflict of interest shall be deemed to arise when the elected or appointed official, or executive staff employee or any member of their immediate family, or an organization or firm which employs such official, executive staff employee or family member has a financial or other interest in the firm or person selected for the contract or grant award.

Immediate family. Shall be defined as spouse, parent, child or brother or sister.

EBCI. Refers to the Eastern Band of Cherokee Indians or Tribe.

Ethics Review Committee. A special committee of the Audit and Ethics Committee established for supporting the Ethics Program.

E3 ETHICS REVIEW COMMITTEE

E3.1 Functions

The functions of the Ethics Review Committee shall be:

- Development and implementation of key ethics and compliance initiatives
- Evaluate resources needed to carry out Ethics Program objectives and make recommendations to the Audit and Ethics Committee as needed
- Optimize information flow and coordination between the Ethics Program and other relevant functions
- Review and approve policies and procedures for the Ethics Program
- Review potential ethics and compliance issues and their resolution
- Review and act on complaints
- Authorize and conduct investigations when warranted
- Review results of investigations and prepare and approve findings of facts
- Present findings of facts to the Audit and Ethics Committee for final decision and action on complaints
- Present quarterly update to the Audit and Ethics Committee on the activity of the Ethics Program

E3.2 Membership

The Ethics Review Committee will consist of the following:

1. Voting Members
 - a) Ethics Officer
 - b) Audit and Ethics Committee Chair or other designated voting committee member
 - c) Ethics Advocate
2. Advisory Members
 - a) Chief Audit and Ethics Executive
 - b) Independent Legal Counsel
3. Other Non-Voting Members
 - a) Ethics Specialist
 - b) Internal Audit Staff as needed
 - c) Ethics Advocates as needed

E3.3 Ethics Advocates

Eligibility

To serve as an Ethics Advocate the following requirements must be met:

- Must be an enrolled member and resident of one of the six Tribal townships of the Eastern Band of Cherokee Indians
- Must be 22 years of age or older
- Must have a Bachelor's Degree or higher, J.D. preferred
- Cannot be a Tribal Official as defined by Cherokee Code 117-45.1(a)(1)
- Cannot have any pending criminal charges or felony convictions

Selection

The Audit and Ethics Committee will identify and select a member of each township (Big Cove, Birdtown, Painttown, Snowbird/Cherokee County, Wolftown, and Yellowhill) to serve as an Ethics Advocate through an application process. Notification will be sent to each community club and announcement will be made in local newspapers and social media.

The Audit and Ethics Committee will review applications and will conduct interviews with approved applicants.

Once a member from each township is selected to serve as an Ethics Advocate, one member will be selected to serve on the Ethics Review Committee as a voting member. The other members will be available to serve when called, on a rotational basis, to assist the Ethics Review Committee and at times may be assigned the voting authority of the sitting Ethics Advocate. An Ethics Advocate may also be called on to assist Ethics staff with complaints and investigations.

Oath

Each member selected to serve as an Ethics Advocate must take an oath as prescribed by the Audit and Ethics Committee.

Term

Ethics Advocates will serve a term of four (4) years. Every four years the selection process will repeat.

E3.4 Meetings

The Ethics Review Committee will hold, and conduct meetings as follows:

- Meetings will be called by the Ethics staff as needed.
- The Ethics staff shall arrange meetings, prepare agendas, and notify members.
- A Chair for each meeting will be selected from the voting members.
- A quorum shall consist of all voting members.
- The actions of a simple majority of members at a meeting at which a quorum is present shall constitute official acts of the Ethics Review Committee.
- On occasion, a vote may be requested and conducted electronically. If at least two voting members object to deciding electronically, a meeting shall be called.
- The Ethics Specialist will act as Secretary to document and maintain meeting minutes and official actions taken by the Ethics Review Committee.

E4 ADVISORY OPINIONS

E4.1 Subject of an Advisory Opinion

The Audit and Ethics Committee or designated subcommittee will issue a written advisory opinion on Cherokee Code Chapter 117, Article IV Section 117-45 Standards of Ethical Conduct to a person qualified to make a request under paragraph E4.2 of this section. The Audit and Ethics Committee or designated subcommittee will not issue an advisory opinion that concerns the subject matter of pending litigation known to the committee.

E4.2 Persons Eligible to Receive an Advisory Opinion

A person who is a Tribal Official, which includes those elected to an office and appointments made by Tribal Council or the Executive Office, is subject to Cherokee Code Chapter 117, Article IV Section 117-45 Standards of Ethical Conduct and may request an opinion regarding interpretation or application.

E4.3 Request for an Advisory Opinion

All requests of advisory opinions must be in writing and contain the following information:

1. Name, address and telephone number of the requesting party.
2. Office or appointment held.
3. Basis of the request for the advisory opinion. This shall include a written scenario with all relevant information for which ethical guidance is sought.
4. Requests for an advisory opinion may be submitted via mail, hand-delivered or email to ويا@nc-cherokee.com. No request will be processed that does not contain sufficient information as required by this section.

E4.4 Processing Advisory Opinions

1. All requests for advisory opinions will be time and date stamped, numbered and logged by the administrative assistant.
2. The Ethics Officer or designee will make an initial determination of completeness and jurisdiction. If jurisdiction is not established, the requesting party will be sent a letter of denial. If jurisdiction is established but insufficient information is provided, the requesting party will be contacted and asked for additional information. The additional information must be provided within 15 business days or the request will not be processed.
3. Once jurisdiction and sufficient information are satisfied, the Ethics Officer or designee in consultation with legal counsel will make an initial determination of interpretation or application and will write a draft advisory opinion letter.
4. The draft advisory opinion letter will be submitted to the Audit and Ethics Committee or designated subcommittee for review and approval.
5. The approved advisory opinion letter will be sent to the requesting party and published on the Office of Internal Audit and Ethics' website (www.ebci-oia.com).

E5 COMPLAINTS

E5.1 Subject Matter of a Complaint

The Audit and Ethics Committee or designated subcommittee may only consider complaints concerning Cherokee Code Chapter 117, Article IV Section 117-45 Standards of Ethical Conduct. The Audit and Ethics Committee or designated subcommittee will not consider complaints regarding:

1. Allegations involving an ordinance outside of its jurisdiction.
2. Alleged violations that occurred and became known more than 3 years ago.
3. Alleged violations that are frivolous or groundless.
4. Alleged violations that purport potential criminal or other unlawful activity outside of its jurisdiction. These complaints will be referred to the appropriate authoritative agency.
5. Alleged violations that are subject to administrative or personnel proceedings or criminal investigation. These complaints will be deferred until the conclusion of such proceedings or investigations.

E5.2 Receipt of Complaints

Complaints must be in writing. A form is available on the Office of Internal Audit and Ethics website at www.ebci-oia.com or by visiting the office. The form does not have to be used but all elements contained in the form must be provided in the complaint.

Each complaint received shall be time and date stamped, numbered and logged by the administrative assistant. A file will be established with the complaint and all supporting documents. The Ethics Officer or designee will assign a staff as case manager/lead investigator and the complaint will be processed as follows:

1. Within 5 business days the staff will conduct an initial review to determine the completeness and jurisdiction. If the initial review is not satisfactory, the complaint will be returned to the complainant with explanation and if requested a meeting will be scheduled with the complainant.
2. If the initial review is satisfactory, the case manager will submit the determination to the Chief Audit and Ethics Executive for approval. Once approval is received from the Chief Audit and Ethics Executive the complaint will be sent to the respondent for an opportunity to respond. The respondent's response must be in writing and submitted within 15 business days. An extension may be requested and may be granted if justified.
3. Upon receipt of response, the case manager and the Chief Audit and Ethics Executive shall review the complaint, response, and any supporting documentation

provided and determine if an investigation is warranted or if the complaint should be dismissed. The case manager will then submit this recommendation to the Audit and Ethics committee or designated subcommittee for review and approval.

4. If an investigation is not warranted and the complaint is dismissed a letter will be sent to the complainant and respondent informing them of the decision.

E6 INVESTIGATIONS

E6.1 Investigation

The case manager/lead investigator will initiate an investigation of the allegation upon approval by the Audit and Ethics Committee or designated subcommittee. If a conflict of interest exists, the Audit and Ethics Committee may designate a special investigative subcommittee or hire an outside independent investigator.

The case manager/lead investigator will review relevant information and documents and will conduct interviews regarding the allegation. The allegation will be examined to determine whether it involves a potential violation of law, rules, or tribal policy. Depending on the nature and severity of the allegation, other departments may need to be consulted.

All actions taken during the investigation will be documented and placed in the complaint file.

Investigations may include the following actions:

1. Conducting Interviews, including interviews with:
 - a) Complainant
 - b) Neutral third-party witnesses
 - c) Corroborative witnesses
 - d) Possible co-conspirators
 - e) Subject of the complaint
2. Collecting evidence, including:

- a) Internal documents, such as personnel files, internal phone records, computer files and other electronic devices, e-mail, financial records, security camera videos, and physical and IT system access records.
 - b) External records such as public records, customer/vendor information, media reports, information held by third parties, and private detective reports.
3. Conducting computer forensic examinations
- a) Reviewing and categorizing information collected
 - b) Analyzing computer-assisted data
 - c) Developing and testing hypotheses
4. Conducting evidence analysis, including:
- a) Reviewing and categorizing information collected
 - b) Analyzing computer-assisted data
 - c) Developing and testing hypotheses

E6.2 Probable Cause Determination

Upon completion of an investigation, the assigned case manager/lead investigator will make a determination of probable cause of a potential violation. The determination will be made in a written finding of fact and submitted to the Audit and Ethics Committee or designated subcommittee for review and appropriate action as follows:

1. Review the findings of fact and affirm or deny the probable cause determination. The Audit and Ethics Committee or designated subcommittee may request further investigation or a hearing prior to affirming or denying the probable cause determination.
2. If a determination of no probable cause of a potential violation is affirmed, the Audit and Ethics Committee or designated subcommittee shall dismiss the complaint with the issuance of a report to the Complainant and Respondent.
3. If a determination of probable cause of a potential violation is affirmed, the Audit and Ethics Committee or designated subcommittee shall prepare the final decision.

E6.3 Final Decisions

The Audit and Ethics Committee shall have sixty (60) calendar days to issue a final decision based on the complaint, investigation and written findings of facts presented by the Ethics Officer or designated subcommittee. The final decision shall be reported to the appropriate parties.

E6.4 Finding of Violation

If the Audit and Ethics Committee finds by clear and convincing evidence that a violation has been committed, the Audit and Ethics Committee will forward its findings to the Executive Office, Tribal Council, the Attorney General's Office, and the Tribal Prosecutor, for purposes of imposing the appropriate penalty as provided in Cherokee Code Chapter 117, Article IV.

E7 REPORTING REQUIREMENTS

E7.1 Attestation and Disclosure

Tribal officials will file an Attestation and Disclosure statement with the Office of Internal Audit and Ethics upon election or appointment and no later than October 1 of every year thereafter. The Attestation and Disclosure Statement must be on a form prescribed by the Office of Internal Audit and Ethics and must include the following:

1. Attestation statement that the Tribal official received, read, understands and will abide by the Code of Ethics.
2. A list of the Tribal official's immediate family as defined in Cherokee Code 117-45.1(a)(5).
3. A list of businesses or entities in which the Tribal official or immediate family has a personal interest as defined in Cherokee Code 117-45.1(a)(3).

E7.2 Fraud, Waste, Abuse, Corruption and Code of Ethics Violations

Tribal officials are responsible for reporting any potential fraud, waste, abuse, corruption or violations of the Code of Ethics. A hotline is available 24 hours 7 days a week. A report can be made by calling 800-455-9014 or on the web at ebci.alertline.com. A report can also be made to any staff of the Office of Internal Audit and Ethics. Reports

must include as much information as possible to aid in an investigation if warrant. Reports of ethical violations must be in writing as described in section E5.2.

E7.3 Charges and Convictions

Tribal officials must notify the Office of Internal Audit and Ethics of any charges or convictions immediately or as soon as reasonably possible but no later than 24 hours. Reports can be made by calling 828-359-7074 or 828-359-7072. Tribal Officials must submit relevant documents outlining the details of the charge or conviction within five (5) days of the occurrence. Subsequently, Tribal officials must submit documentation of the disposition of the charge or conviction within five (5) days of the disposition.

E7.4 Gifts, Donations and Contributions

Tribal officials are required to report any gifts, donations, or contributions given or received each quarter as follows:

- 1st Quarter (October-December) due January 15
- 2nd Quarter (January-March) due April 15
- 3rd Quarter (April-June) due July 15
- 4th Quarter (July-September) due October 15

Reports must be made using the *Disclosure by Tribal Officials: Gifts, Donations or Contributions* form provided by the Office of Internal Audit and Ethics. The report must be completed and submitted even if the Tribal official did not give or receive gifts, donations or contributions in any quarter.

What to Report

The items below must be reported. This list is not all inclusive.

- Money or items given to or received from constituents
- Money or items that are valued over \$50 given to or received from outside political officials/candidates or entities
- Expensive meals (anything over \$50)
- Complimentary rounds of golf
- Travel and/or lodging expenses paid for or reimbursed by an outside source

- Items received for free, a discounted rate or on better terms not available to all Tribal members.
- The cost of an event paid for by others on behalf of one or a select few Tribal officials designed as a platform to express political views.
- Campaign contributions
- Anything of value of \$100 or more given or received from other government entities
- If the value of an item is unknown or the reporting party cannot estimate it then it must be reported even if it would normally fall under the do not need to report category for gifts, donations or contributions.

What not to Report

The items below are considered exceptions and do not need to be reported.

- Modest refreshments (donuts, coffee, hors-d'oeuvres)
- Greeting cards, pens, note pads, baseball caps, t-shirts or other items of nominal value
- Informational materials
- Discounts or rates if they are available to all Tribal members and are not offered due to the status of the Tribal official
- Items indigenous to Tribes shared as a cultural norm
- Rewards or prizes from competitions that are open to the public
- Inheritance
- Personal funds a Tribal official spends on their campaign
- Gifts given by or to immediate family members or based on a close personal relationship (i.e. Christmas gifts, birthday presents)
- Honorary degrees or awards from an educational, charitable, religious, professional, recreational, social, fraternal, public service, or civic organization
- Small tokens or gifts given to everyone attending a public event.
- Plaques or items of nominal value given to the Tribal official for speaking at a public event
- Church tithes

- Items given or received due to illness (i.e. cards, flowers, food)
- Items given or received to memorialize or honor a recently deceased person (i.e., cards, flowers, food)
- Items received for the activities the Tribal official performs outside of their duties as an elected or appointed official; or as product of their relationship with an immediate family member (i.e. retirement dinner, membership in a nonprofit, honorary dinner and/or award for academic or athletic achievement)
- Employee appreciation and recognition gifts paid from departmental budgets
- Gifts less than \$100.

The Office of Internal Audit and Ethics should be contacted for guidance if there is a question with any item not listed.

Failure to Report

Tribal officials are subject to the following penalties if any reporting requirement is not met by the due date:

- First failure to report is a written reprimand
- Second failure to report is a \$50 fine
- Third failure to report is a \$100 fine
- Ongoing failure to report will be considered as a Code of Ethics violation.

If a Tribal official feels an imposed penalty was unfair or unjust they may request a review of the matter by the Audit and Ethics Committee or designated subcommittee.

E8 EDUCATION PROGRAM

Tribal Officials will complete an education program on the Standards of Ethical Conduct within ten (10) days of their election or appointment and a refresher course at least every two (2) years thereafter. The Office of Internal Audit and Ethics will develop the education program and refresher course to be made available to Tribal officials as appropriate. Failure to complete the education program or refresher course as required will be considered as a Code of Ethics violation.