

## Memorandum

DATE: April 18, 2018

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TO: John L. Berrey, Chairman,  
Quapaw Tribal Business Committee

FROM: Stephen R. Ward Direct Dial: (918) 586-8978

RE: Procedure Under Quapaw Election and Voting Ordinance of 2004 for Filling  
Vacancies on Grievance Committee [08632-0001].

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This memorandum provides legal guidance concerning the procedures under the law of the Quapaw Tribe for filling vacancies that occur on the Grievance Committee.

### Summary

The Election and Voting Ordinance of 2004 (the “Election Ordinance”) provides that a vacancy on the Grievance Committee is to be filled by an appointee designated by the Chairman of the Business Committee, and approved by concurrence of the Business Committee.

### Discussion

The Grievance Committee of the Tribe was established under Section 6 of the Governing Resolution.<sup>1</sup> As originally adopted in 1956, Section 6(a) provided:

“A Grievance Committee, consisting of three persons of Quapaw Indian blood, shall be elected by the general council, and shall not include any members of the Quapaw Tribal Business Committee. The term of office of the Grievance Committee shall be for two years and the members shall be elected at the same time and in the same

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<sup>1</sup> Until 1956, the Quapaw Tribe determined its own governmental organization, which followed traditional lines. To preserve its inherent sovereignty and autonomy—among other reasons—the Tribe declined to submit to federal reorganization under the Indian Reorganization Act of 1934 (the “IRA”), 25 U.S.C. § 461 *et seq.* However, by the 1950s the Bureau of Indian Affairs considered the Quapaw Tribe to be an “unorganized group,” and required the Secretary of the Interior to “exercise his authority” over the Tribe by requiring it to approve the Governing Resolution prior to the payment of a judgment awarded by the Indian Claims Commission for the loss of its last reservation in Arkansas. See BIA, *Report of Meeting of Aug. 19, 1956*, at 1.

manner as that provided for the election of the members of the Quapaw Tribal Business Committee.”

*Id.*<sup>2</sup> Under a 1999 amendment, the second sentence of this section was revised to read as follows: “The terms of office for the Grievance Committee shall be for two (2) years, and nominations shall be from the floor, in each even numbered year.” (Quapaw Indian Council Res. No. 09181999-D (Sept. 18, 1999).

However, in 2004 the Quapaw Indian Council—commonly known as the “General Council”—adopted the Election Ordinance, which changed the procedure for filling vacancies on the Grievance Committee.<sup>3</sup> Section 15.2 of the Election Ordinance provides that:

“If a vacancy occurs for any reason on the Grievance Committee, the Chairman, shall appoint a replacement Grievance Committee member to serve the remainder of the unexpired term.”

Quapaw Code tit. 14, § 15.2. Under this language, then, when a vacancy occurs on the Grievance Committee the Chairman is required to appoint a replacement, who must be approved by the Business Committee.<sup>4</sup> The replacement member of the Grievance

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<sup>2</sup> Following the adoption of the IRA, the Bureau of Indian Affairs advised tribes—particularly smaller tribes—to create committees, boards, and commissions through their constitutions as substitutes for basic governmental institutions such as police and courts. As a result, tribal constitutions from that era included an array of committees, including for health, public welfare, law and order, education, enrollment, and others. See Felix S. Cohen, *On the Drafting of Tribal Constitutions*, at 21 (Univ. Okla. Press. 2006). Grievance committees were adopted by some tribes in the absence of tribal courts and other institutions to hear complaints against the tribal council. In recent years, many tribes have eliminated grievance committees from their organic documents in favor of procedures such as referendum and recall.

<sup>3</sup> The Election Ordinance was adopted at a special meeting of the General Council on January 31, 2004.

<sup>4</sup> Section 15 requires that the Chairman’s appointment be “subject to the concurrence of the Business Committee.” The term “concurrence” does not necessarily mean that such an appointment must be approved by the Business Committee unanimously. The common meaning of the term “concurrence” is “agreement” or “consent.” See *Am. Heritage Dictionary of the English Language* at 392 (3rd ed.1992); *Black’s Law Dictionary* at 291 (6th ed. 1990). Under a plain reading of this language, it appears a simple majority vote of the Business Committee is all that is required to confirm an appointment to the Grievance Committee by the Chairman under Section. 15.2.

Committee serves for the remainder of the unexpired term of the person he or she is appointed to replace.

The Election Ordinance requires the Chairman to appoint a replacement to the Grievance Committee in the event of a vacancy (Section 15 uses the term “shall appoint”), but it does not establish a fixed time limitation by which such an appointment must be made. Although this language has never been construed by the Tribal courts, the most obvious interpretation is that such an appointment would be made at the Chairman’s discretion, and within a reasonable period of time.