

# SECTION E: 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 with Cherokee Code Chapter 117-45.

### E2 DEFINITIONS

***Tribal officials.*** Any person who is:

- a) A Tribal officer as defined in Section 1 of the Charter and Governing Document;
- b) A member of the Cherokee School Board as defined in C.C Section 115-8;
- c) Serving as a member of an authority, board, committee, or commission, appointed by Tribal Council or the Executive Committee; or Principal Chief, and who is subject to removal by the appointing authority; or

- d) Appointed by Tribal Council or the Executive Committee or Principal Chief and who is subject to removal by the appointing authority, to carry out actions, provide guidance, or assistance to the Tribal Council or the Executive Committee or to a member of the Executive Committee.

***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, 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 to support 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 Advocates
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

### 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/Towstring, Birdtown/3200 Acre Tract, Painttown, Snowbird/Cherokee County, Wolfstown/Big Y, and Yellowhill) to serve as an Ethics Advocate through an application process. Notification will be sent to each community club and announcements will be made in local newspapers and social media.

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

#### Oath

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

#### Term

The regular term of an Ethics Advocate is four years. No Ethics Advocate may serve more than two consecutive four-year terms at one time but may serve again after a break in service of at least one year. 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.
- The Ethics Officer will serve as the Chair. In the event of conflict, a Chair will be selected from the Committee members.
- A quorum shall consist of 5 voting members. In the event of a non-vote, the issue will be sent to the Audit and Ethics Committee for review.
- 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 three 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 emailed to [oia@ebci-nsn.gov](mailto:oia@ebci-nsn.gov). 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 Ethics Staff.
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 (<https://oia.ebci-nsn.gov>).

## E5 WAIVER REQUESTS

A Tribal Official may request a limited waiver from any provision of the Standards of Ethical Conduct if extenuating circumstances exist.

### E5.1 Written Request

The Tribal official must submit a signed written request for a waiver. This waiver request may not be used as a defense against an ethics complaint. This request must include the following:

- Name and appointed position
- Specific section to be waived
- Reason and justification for the waiver
- Disclosure of financial or personal benefit
- Any potential conflicts of interests
- Any additional supporting documentation

### E5.2 Review Process

1. All requests for a limited waiver will be time and date stamped, numbered, and logged by the Ethics Staff.
2. The Ethics Officer or designee will make an initial determination of completeness within 5 business days. If the request is not complete; ethics staff will contact the tribal official and request additional information. The additional information must be provided within 5 business days, or the request will not be processed.
3. Once the request is deemed complete, the Ethics Officer or designee will present the information to the Audit and Ethics Committee or designated subcommittee for review and a final determination.
4. Limited waivers will only be granted when a Tribal official clearly demonstrates sufficient justification that the waivers impact is in the best interest of the Tribe.

### E5.3 Decision and Notification

Tribal officials will be notified in writing regarding the decision. If a waiver is granted, any conditions, limitations, or safeguards will be outlined.

## E6 COMPLAINTS

### E6.1 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.

### E6.2 Receipt of Complaints

Complaints must be in writing. A form is available on the Office of Internal Audit and Ethics website at <https://oia.ebci-nsn.gov> 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. The name of the complainant will be kept confidential to every extent possible.

Each complaint received shall be time and date stamped, numbered and logged. A file will be established with the complaint and all supporting documents. The Chief Audit

and Ethics Executive 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 Ethics staff will redact any identifying information from the complaint and 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 will 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.

### **E6.3 Self-Initiated Complaints**

The Ethics staff may submit a resolution recommending the initiation of a complaint to the Audit and Ethics Committee or designated subcommittee on its own motion without a signed complaint. The recommendation must include documented justification. If approved, the complaint will follow the same process outlined above.

## E7 INVESTIGATIONS

### E7.1 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

### E7.2 Ethics Violation Determination

Upon completion of an investigation, the assigned case manager/lead investigator will determine if there is a preponderance of evidence to support an ethics 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 an ethics violation determination. The Audit and Ethics Committee or designated subcommittee may request further investigation or a hearing prior to affirming or denying the determination.
2. If a determination of no ethics 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 an ethics violation is affirmed, the Audit and Ethics Committee or designated subcommittee shall prepare the final decision.

### E7.3 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.

### E7.4 Finding of Violation

If the Audit and Ethics Committee finds by clear and convincing evidence that a violation has been committed, a monetary fine shall be assessed. The Committee shall take the severity of the violation and any previous ethics violations into account when determining the amount of the fine, as outlined in the fine matrix below.

		<b>Violation History</b>			
		0	1-2	3-4	5 or more
<b>Severity</b>	1	\$250	\$500	\$750	\$1,000
	2	\$500	\$750	\$1,000	\$2,500
	3	\$750	\$1,000	\$2,500	\$5,000

- 1 Little to no impact or damages to the victim or tribe
- 2 Some but moderate impact or damages to the victim or tribe
- 3 Significant impact or damages to the victim or tribe

The Audit and Ethics Committee may deviate from the fine matrix and escalate the fine up to \$5,000 for any violation with aggravating factors including but not limited to failure to cooperate in an investigation, interfering with an investigation, providing false information, participating in criminal activity, or inflicting damages or losses more than \$5,000. In addition to a monetary fine, the Audit and Ethics Committee may impose/recommend a corrective action on the Tribal official.

The Audit and Ethics Committee will forward its findings to the appropriate agency, office, or appointing authority.

## E8 REPORTING REQUIREMENTS

### E8.1 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 15 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 117-45.3(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 117-45.3(a)(3).

## E8.2 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](http://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 warranted. Reports of ethical violations must be in writing as described in section E5.2.

## E8.3 Charges and Convictions

Tribal officials must notify the Office of Internal Audit and Ethics of any misdemeanor or felony 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.

## E8.4 Gifts, Donations and Contributions

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

- 1<sup>st</sup> Quarter (October-December) due January 15
- 2<sup>nd</sup> Quarter (January-March) due April 15
- 3<sup>rd</sup> Quarter (April-June) due July 15



- 4<sup>th</sup> 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 less than \$250 in value
- 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.

### **Lavish Gifts**

Tribal officials are prohibited from accepting lavish gifts given because of the Tribal official's position. Any gift with a value of more than \$250 will be considered lavish. If a Tribal official is offered or is sent a lavish gift, the Tribal official must immediately contact the Office of Internal Audit and Ethics for guidance. In limited circumstances, this prohibition may be exempted by the Ethics staff.

### **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.

## **E9 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. Failure to complete the education program or refresher course as required will be considered as a Code of Ethics violation.

## **E10 REVIEW OF ACTIONS BY BOARDS, COMMITTEES, AND COMMISSIONS**

For purposes of reviewing actions of boards, committees and commissions to determine if ethical guidelines are being followed, each quarter the Ethics staff will conduct reviews

of meeting minutes. Boards, committees, and commissions are responsible for maintaining minutes for all meetings conducted.

### E10.1 Quarterly Review Plan

A quarterly plan will be established for boards, committees, and commissions to be reviewed. A review notification memo will be sent to the chair two weeks prior to the anticipated on-site visit to communicate the upcoming review, to introduce staff and to outline expectations. The memo indicates that the staff will be in contact to schedule the on-site visit.

### E10.2 Review Procedures

While on-site the Ethics staff will carry out the review which will include:

1. Requesting and reviewing a copy of bylaws or governing documents
2. Requesting and reviewing a list of meeting dates for the period under review
3. Reviewing the minutes of each meeting and preparing summary spreadsheet
4. Interviewing personnel or members as necessary
5. Documenting other relevant observations

### E10.3 Report

At the conclusion of the review the Ethics staff will prepare a written report on the observations. Any potential violation noted will be handled through the complaint and investigation process as appropriate.