

Ethics and Conduct In Tribal Operations

Bureau of Indian Affairs-Alaska Region
Branch of Tribal Operations

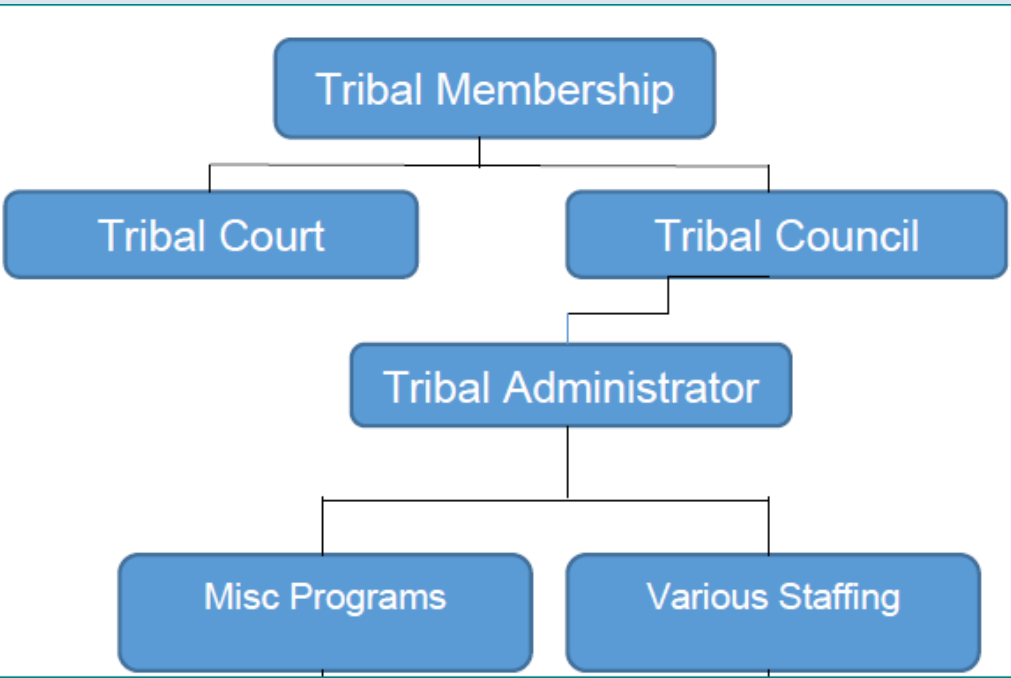


BIA Tribal Government Mission

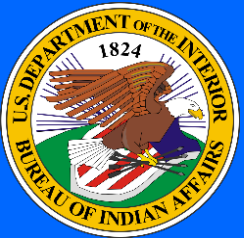
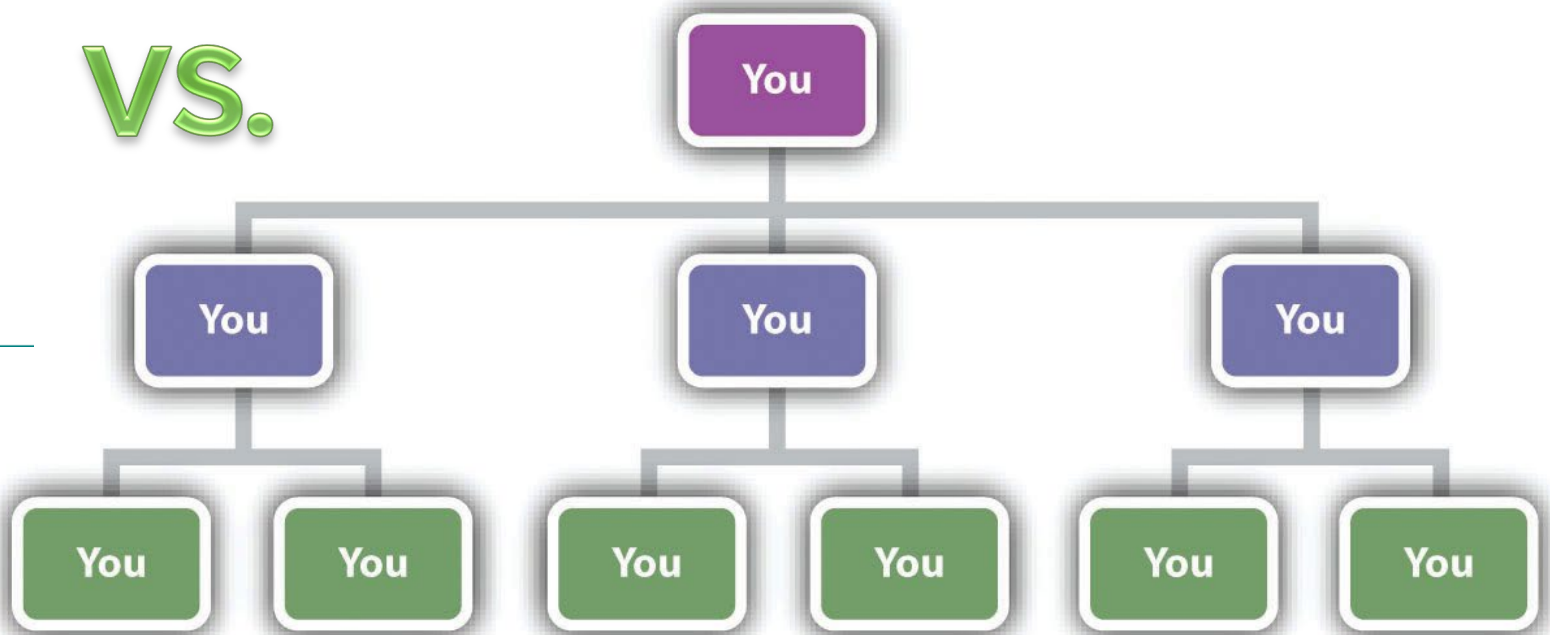
- BIA Tribal Government mission is to *promote awareness of tribal governmental responsibilities and processes, and to provide tribes with the resources they need to foster strong and stable tribal governments in exercising their rights as sovereign nations.*



Understand your Organizational Structure



VS.



Delineation of Roles and Responsibilities

Tribal Governance

Elected officials governing the entity

Decision or rule making using the governing documents as a foundation

Policy Development

Legal and fiscal accountability

Supervises the administrator

Tribal Administration

Hired to lead the entity

Supervises employees

Carries out tasks through policies and procedures

Creation of reports for Council approval



Delineation of Roles and Responsibilities

Tribal Administration

Hired to lead the entity

Supervises employees

Carries out and assigns tasks through policies and procedures

Creation of reports for Council approval

Tribal Employees

Carry out Program requirements

Reports to Administrator



Conflicts

Official Time

Misuse of
Position

Personal
Interest

Improper
Gifts

Outside
Employment

Disclosure of
Information

Harassment

Complaints &
Grievances

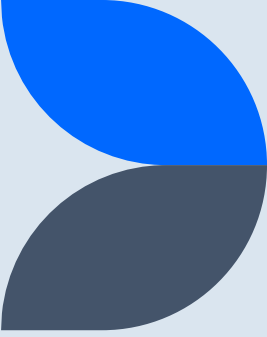
Post
Employment

Enforcement

Criminal
History



Indian Child Protection and Family Violence Prevention Act, P.L. 101-630, Title IV



25 C.F.R. §3207 Character Investigations

(b) Criminal records

The minimum standards ensure that none of the individuals appointed to positions described in subsection (a) **have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any of two or more misdemeanor offenses**, under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

(c) Investigations by Indian Tribes and Tribal Organizations

Each Indian Tribe or tribal organization that receives funding under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.] or the Tribally Controlled Schools Act of 1988 [25 U.S.C. 2501 et seq.] shall—

(1) conduct an investigation of the character of each individual who is employed, or is being considered for employment, by such tribe or tribal organization **in a position that involves regular contact with, or control over, Indian children**, and



Nature of a Dispute or Conflict

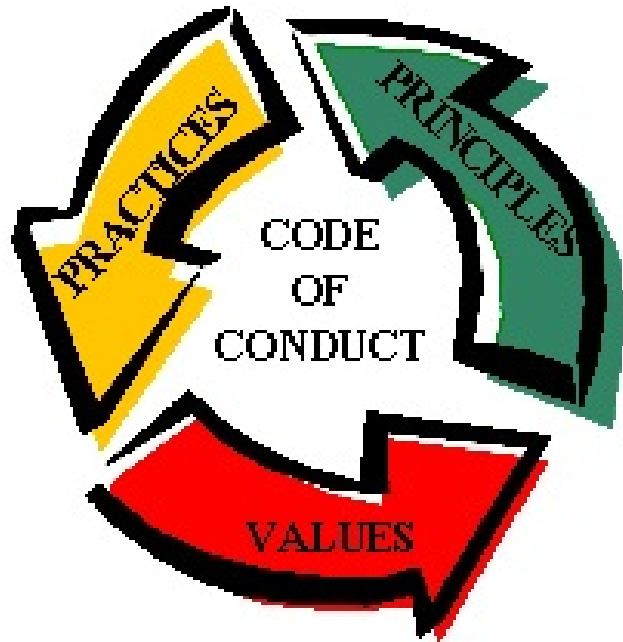


Written Codes

Code of Ethics or Conduct should be expected of both the Tribal Council and its Tribal Employees



Benefits of codes in place



State and Federal laws, for example

AS 39.52

Alaska Executive Branch Ethics Act

<https://law.alaska.gov/doclibrary/ethics/EthicsInfo.html>

18 U.S.C.
201-209

Criminal Conflict of Interest Laws for Executive Branch Employees

5 C.F.R. 2635

Standards of Ethical Conduct for Employees of the Executive Branch



“

The time is always right to do
what is right

Martin Luther King, Jr.

”



Personal or Imputed Interests

18 U.S.C. 208 prohibits Government employees from participating personally and substantially in official matters where they (or someone whose interests are imputed to them) have a financial interest

AS 39.52.110 prohibits substantial and material conflicts of interests. Public employees and their immediate family may not improperly benefit, financially or personally, from their actions as public employees.



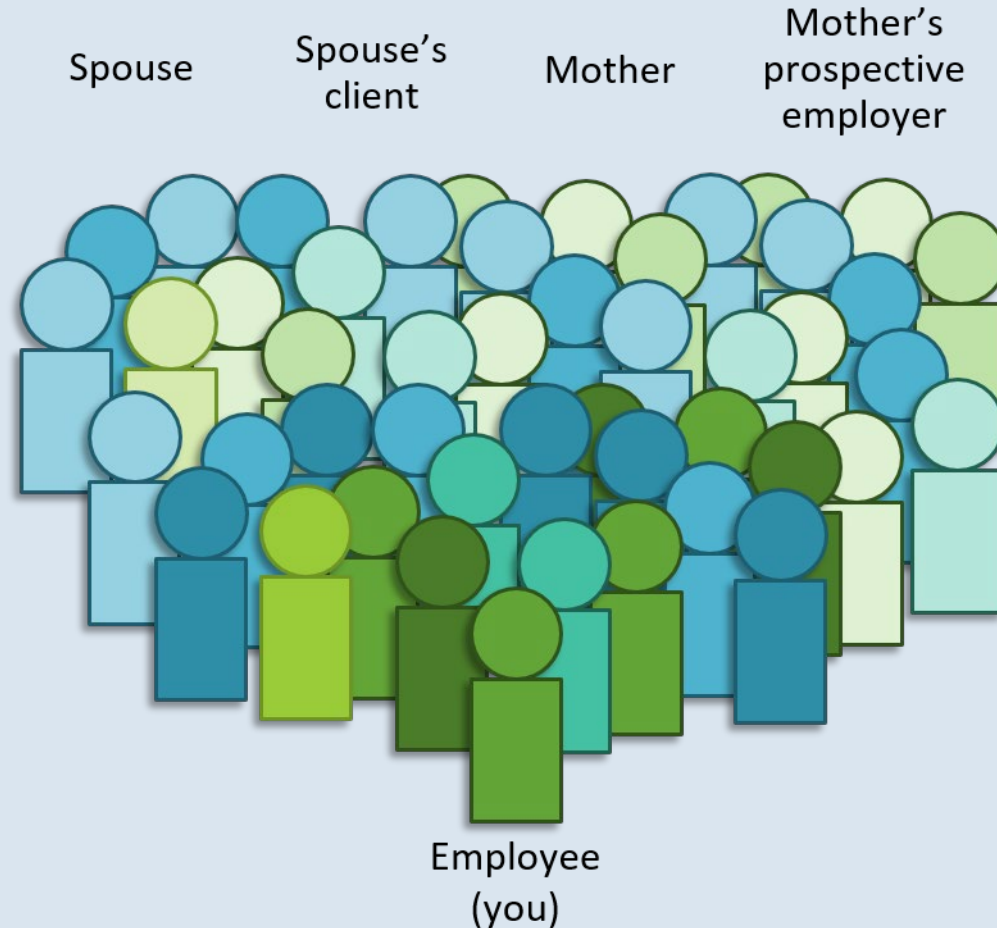
Covered Relationships



Covered Relationships

Employees have covered relationships with:

- Person (other than prospective employer) with whom they have/seek a business, contractual or other financial relationship that involves other than a routine consumer transaction
- Member of household or relative with whom they have a close personal relationship
- Person for whom they have, in the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee
- Organization in which they are an active participant
- Person for whom spouse, parent or dependent child is (to employee's knowledge) serving/ seeking to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee



Appearance of loss of impartiality

If you are involved in a **specific party matter**;

you must consider whether a reasonable person with knowledge of the relevant facts would question your impartiality if:

such matter is likely to affect the financial interest of a **member of your household**;

OR

a person with whom you have a **covered relationship** is or represents a party to such matter

If you conclude a reasonable person under such circumstances would question your impartiality, **you must not participate in the matter**



Specific Party Matters

Contracts

Grants

Investigations

Audits

Applications

Leases

Loans



Recusals

are the obligation of the employee

can be voluntary or directed

can be implemented by employees/supervisors

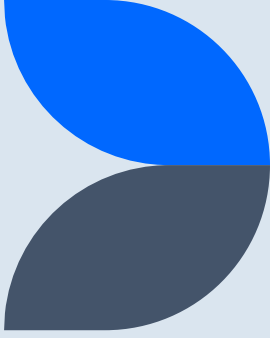


Misuse of Position

- C.F.R. § 2635.702, 704, and 705 and AS 39.52.120
 - **Use of Public Office for Private Gain**
 - **Use of Government Property**
 - **Use of Official Time**
- 5 C.F.R. § 2635.703 and AS 39.52.140
 - **Use of Non-public Information**



Improper Gifts



18 U.S.C. 203

- A Federal Government Employee may NOT accept a gift given by a prohibited source of the BIA or given because of his/her official position.

AS 39.52.130

- A public employee may not solicit or accept gifts if a person could reasonably infer from the circumstances that the gift is intended to influence the public employee's action or judgment.
- "Gifts" include money, items of value, services, loans, travel, entertainment, hospitality, and employment. All gifts from registered lobbyists are presumed to be improper, unless the giver is immediate family of the person receiving the gift.



Improper Gifts

Favors

Gratuities

Entertainment

Discounts

Training

Cash

Gift
Certificates

Hospitality

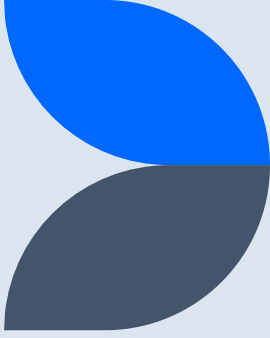
Lodging

Meals

Transportation



Exceptions to the Gifts Rule



Unsolicited gifts of \$20 or less, per occasion, from a single source

Gifts based on a personal relationship

Educational Materials and Books (\$100 or less)

Certain discounts and similar benefits (available to the public)

Gifts based on outside business or employment relationships

Free attendance at a widely attended Gathering



Not a Gift

Modest food and refreshments



Greeting cards, plaques, and trophies



Loans from banks or terms available to the public



Opportunities or benefits available to Government Employees



Prizes in contests open to the Public



Free attendance at event where you are speaking on behalf of the government



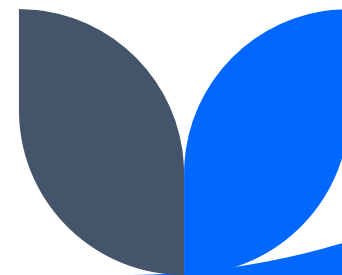
Outside Employment

5 C.F.R. 3501-105

- Requires all Department employees to seek prior written approval from a Departmental or bureau ethics counselor before engaging in employment with a prohibited source.
- **Prohibited source** is any person, company, or organization that is seeking official action by your agency, does business with your agency, is seeking to do business with your agency, conducts operations that are regulated by your agency, or has interests that might be affected by the performance or nonperformance of your official duties

AS 39.52.170

State employees may not work (paid or unpaid) for a person or organization or provide services that benefit their own interests in addition to their State job, if that outside work or service is incompatible or in conflict with the proper discharge of their official State duties.



Post Employment

18 U.S.C. 207

prohibit you from engaging in certain communications and appearances before the federal Government on behalf of other people or organizations

AS 39.52.180

For two years after leaving State service, a former public employee may not provide advice or work for compensation on any matter in which the former public employee personally and substantially participated while employed by the State.

This prohibition applies to cases, proceedings, applications, contracts, legislative bills, regulations, and similar matters.



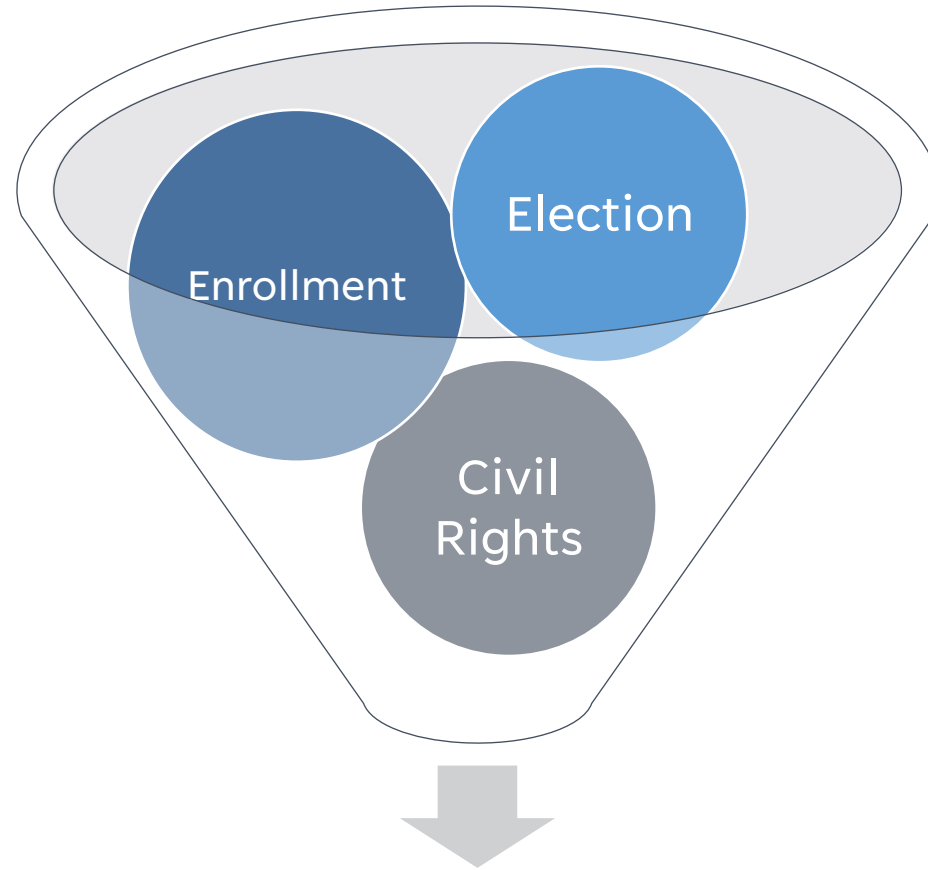
Complaints and Grievances

What steps are in place when a complaint or grievance is brought to a...

- Council Member?
- Staff Member?
- Council Meeting?
- Membership Meeting?



Complaints and Grievances



Governing Documents

- Constitution and Bylaws
- Ordinances or codes
- Policies and Procedures



BIA and Tribes

- BIA must give deference to Tribal Interpretation of Tribal Governing Documents
- Tribes are the primary interpreters of Tribal Law
 - Even when the Tribe gives BIA formal authority to review action taken, authority should be construed as narrowly as possible to avoid unduly interfering with the tribe's self-governance
 - When acting in capacity to carry out G-to-G relationship, the BIA must take care to avoid intruding on tribal sovereignty



Tribal Forums

Any Tribal Procedure

- Internal Tribal affairs-any internal matter
- Something established for yourselves, by yourselves
- Any procedure for adjudicating matters
- General tribal meeting, if no other means
- If the Tribe has not established or designed a forum for resolution of a dispute, BIA may offer assistance to the Tribe in establishing a forum.
- BIA may take a more active role, if necessary.



Tribal Forums

Unless the document says “Appeal to the Bureau of Indian Affairs,” BIA will guide the tribe to handle internally.

Challenges to tribal action should be heard in Tribal forums

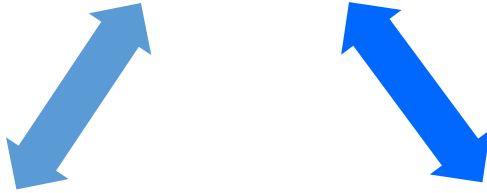
- Intra-tribal disputes should be resolved in tribal forums
- BIA must defer to the tribal forum’s resolution of a dispute
- A tribal forum does not have to be a tribal court
- Appellants before the Interior Board of Indian Appeals must have exhausted tribal remedies
- BIA may recognize an interim Tribal Government, if necessary



Taking Action on a Dispute or Conflict



Relationships



Procedures



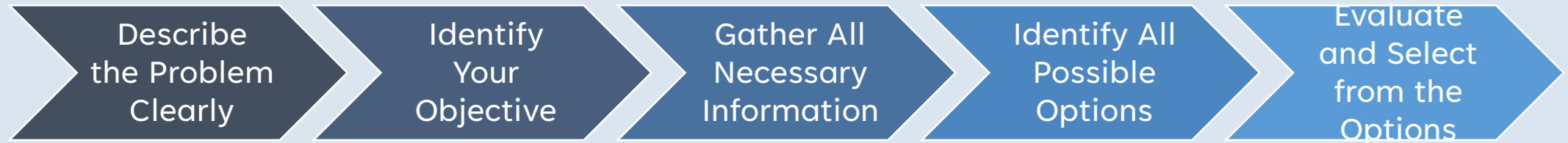
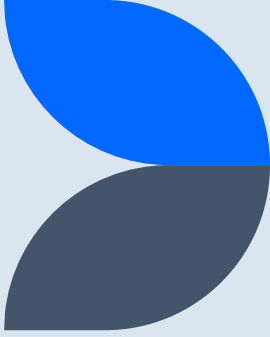
Shared Context



Your Role in Promoting Collaboration



Pressure-Easing and Decision-Making Strategies



Break down big decisions into a series of smaller ones

Keep cause and effect separate when dealing with complex situations or problem

Remember your priorities, then single out one or two-that is manageable- and work on that much alone

Draw, sketch, or graph the issue—Visualizing the problem may aid in understanding its dimensions.



Interior Board of Indian Appeals

Decisions

- Fact specific
- Can apply a past decision on current matter if issue or appeal is applicable

Decisions of the Interior Board of Indian Appeals (IBIA)

43 C.F.R. §4.1

<https://www.doi.gov/oha/organization/ibia/findingIBIA>



IBIA Decisions

Tribal Remedies must first be exhausted in any appeal governed by an issue of tribal law.

Chris Reeves v. Great Plains Regional Director, 49 IBIA 126 (2009)

The Indian Civil Rights Act does not give rise to an obligation on the part of the BIA to try compel a tribe to follow or enforce tribal laws

Chris Reeves v. Great Plains Regional Director, 49 IBIA 126 (2009)

The Board generally lacks jurisdiction over enrollment and membership matters

Edson G. Gardner and Lynda M. Kozlowicz v. Uintah and Ouray Agency Superintendent, 51 IBIA 166 (2010)



IBIA Decisions

The BIA does not have the independent obligation to intervene and decide Tribal disputes that are intra-tribal in nature, even in situations where the Tribe appears incapable of resolving the leadership dispute itself.

Cayuga Indian Nation of NY v. Great Plains Regional Director, 49 IBIA 126 (2009)

A Tribe, as a sovereign nation, has not only the right, but the responsibility, to resolve this dispute for itself, without further interference from BIA.

Wadena, et al. v. Acting Minneapolis Area Director, 30 IBIA 130, 147 (1996)

It is the responsibility of agencies and organizations other than BIA to “determine for themselves with whom they will interact in dealings with the Tribe or, alternatively, to wait until such time as BIA, another entity, or the Tribe itself, makes a determination upon which those third parties choose to rely” based on the rules, regulations, policies, or statutes that may apply to them.

Alturas Indian Rancheria v. Pacific Regional Director, 54 IBIA 138, 144 (2011)



Basic Obligations of Public Service

Act
Impartially
and do not
give
preferential
treatment to
any private
organization
or individual

Do not misuse
your public
position for
your own or
others'
private gain

Be
responsible in
the use of
Tribal time
and resources



Office of Inspector General U.S. Department of the Interior

Report:

- Fraud
- Waste
- Abuse
- Misconduct
- Mismanagement

1-800-424-5081

<https://doioig.gov/oig-hotline-forms>

- General Complaint
- Confidential Complaint
- Anonymous Complaint
- Whistleblower Retaliation Complaint



Quyana

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