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## MEMORANDUM

DATE: September 12, 2005  
TO: Delaware Nation  
FROM: Steven D. Sandven, Esq.  
RE: **ARTICLE IX - VACANCIES**

### *Purpose*

The purpose of this section is to ensure the people of the Nation have governmental representation at all times by explicitly laying out a process to fill vacancies for elected or appointed positions.

### *Currently Reads*

Failure to attend three (3) consecutive duly called executive committee meetings, unless excused by a majority of the executive committee, shall automatically result in loss of office for the individual concerned.

The resulting vacancy, or a vacancy created by death, resignation, recall or removal, shall be filled for the unexpired term in accordance with the provisions of Article VII, Section 6, of this constitution.<sup>1</sup>

### *Other Tribes*

<p><u>Miami Tribe of Oklahoma</u></p> <p>Article X</p> <p>Except for succession of Second Chief to the office of Chief, as provided in the By-</p>
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<sup>1</sup> Art. VII, Sec. 6 of the Delaware Constitution provides: Filling of Vacancies. Any vacancy which occurs in the membership of the executive committee shall be filled for the unexpired term at the next duly called meeting of the general council.

Laws, vacancies in any elective office, due to the death of any member, upon written resignation. upon conviction of a felony, has ceased to physically reside within the required area, as noted in Article 11, Section I of the By-Laws, and/or has been absent without being excused by such respective body, for three (3) consecutive regular or special meetings, shall be filled by appointment of the Business Committee. Said appointment shall be made within thirty (30) days at any regular or special Business Committee meeting, and said appointee shall serve until the next regular election. At such time, a replacement shall be elected to fill that vacancy for the unexpired portion of the term for office. A vacancy for the general purpose of this Article means that the office is unoccupied, and that there is no incumbent who has a lawful right to hold said office.

### Caddo Tribe of Oklahoma

#### Article VIII

Section 1. Tribal Chairman. If a vacancy occurs in the office of Tribal Chairman and less than one (1) year remains of his term of office, the office shall be filled by the Vice Chairman Of the Tribal Council who shall serve for the remainder of the unexpired term of office in the position of Chairman unless earlier removed or recalled. During the period which the Vice-Chairman serves as Chairman under these circumstances, the Vice-Chairman's office shall not be considered vacant and he shall return to serve the unexpired portion of his own term of office upon election and installation of a Chairman. If a vacancy occurs in the office of Tribal Chairman and more than a year remains of his term of office, the Tribal Council shall within sixty (60) days of the vacancy, cause to be held a special election in which all qualified voters of the Caddo Indian Tribe of Oklahoma may participate for the purpose of filling the vacancy.

Section 2. Vice-Chairman, Secretary, Treasurer or District Council Representatives. If a vacancy occurs in the office of Vice-Chairman, Secretary, Treasurer or District Council Representative, the office shall remain vacant until the next regular annual election of the tribe. If the term of the vacant position does not expire at the next regular annual election, the vacancy will be filled for the unexpired portion of the term. In the event the vacancy occurs in the office of the Secretary or the Treasurer, the council shall select one of its members to perform the duties of the vacant office until such vacancy is filled.

### Crow Tribe

#### Article VII

Section 1. Executive Branch. If an officer of the Executive Branch of the Crow Tribal Government shall die, resign, be removed or recalled, or be convicted of a felony while in office, the Chairman of the Executive Branch, or his official designee, shall immediately declare the office vacant and direct the Secretary of the Executive Branch, or his designee, to hold an election within sixty (60) days of the

declaration of vacancy to elect a successor to fill the un-expired term. The election shall occur in accordance with the duly adopted election ordinance. If the position of Chairman shall become vacant, the Vice-Chairman shall act as Chairman until the election of a new Chairman. If the position of Secretary shall become vacant, the Vice-Secretary shall act as Secretary until the election of a new Secretary.

Section 2. Legislative Branch. If an officer of the Legislative Branch of the Crow Tribal Government shall die, resign, be removed or recalled, or be convicted of a felony while in office, the Speaker of the House of the Legislative Branch, or his official designee, shall immediately declare the office vacant and direct the Secretary of the Executive Branch, or his official designee, to hold an election in the appropriate district within sixty (60) days of the declaration of vacancy to elect a successor to fill the un-expired term. The election shall occur in accordance with the duly adopted election ordinance.

### Sipayek Members of the Passamaquoddy Tribe

#### Article VI

Section 4. Vacancies in Office. If the Governor dies, resigns, or is recalled from office, the Tribal Council shall declare the office vacant and appoint the Lt. Governor to fill out the unexpired term of the Governor. If the Lt. Governor is appointed to fill out an unexpired term of the Governor, or if the Lt. Governor dies, resigns, or is recalled from office, the Governor and Council shall declare a position vacant and shall call and hold a special election to fill the vacancy. In the event that the offices of Governor and Lt. Governor are vacant at the same time, the member of the Council who was elected by the largest number of votes shall serve as interim Governor, temporarily vacating his or her position on the Council, until the offices are filled by special election. If a Tribal Council member dies, resigns, or is recalled from office, the Tribal Council shall declare the position vacant and shall call and hold a special election to fill such vacancy. In the event that recall would make it possible to achieve a quorum because of vacancies on the Tribal Council, those officials who received the least number of recall votes shall remain in office until such time as successors are elected to fill their positions.

Section 5. Secret Ballot. All tribal elections, whether conducted under this Article or Article VII, shall be conducted by secret ballot.

### Big Lagoon Rancheria in California

#### Article VIII

##### Section 3. Vacancies and Removal From Office

(a) Vacancies may occur on the tribal council by reason of any of the following: (i) By death or resignation of the member. (ii) By a member being convicted of a felony involving dishonesty. (iii) By a member having been expelled or suspended from the council by a majority vote of the general council at a meeting called for

that purpose or by a vote of at least four (4) of the (5) members of the tribal council by reason of neglect of duty, gross misconduct, or because of the member becoming mentally or physically incapable of performing his/her duties. Before any vote for expulsion or suspension is taken, such member or official shall be given a written statement of the charges against him or her at least five days before the meeting of the general council or business council at which the matter of expulsion or suspension is to be decided, and shall be given an opportunity to answer any and all charges at the designated council meeting.

(b) If any member of the business council during his or her term of office shall die, resign, be removed or recalled from office, the business council shall declare the position vacant. If less than twelve (12) months of the term remains, the business council shall fill the vacancy by appointment of a member of the tribe who qualifies for candidacy to the vacant position. If more than twelve (12) months remain in the unexpired term, a special election shall be called to fill the vacant position.

### Flandreau Santee Sioux Tribe

#### Article VI

Section 1. If a member of the Executive Committee shall die, resign, or be absent from scheduled General Council or Executive Committee meetings for three successive meetings without reasonable justification, the Executive Committee shall declare the position vacant and shall immediately thereafter appoint a person qualified to hold office to serve the unexpired term.

Section 2. An elected official shall be removed from office by the Executive Committee upon investigation and receipt of substantive evidence of conviction of a felony or crime involving moral turpitude.

Section 3. An elected official may be removed from office by the General Council by petition of no confidence signed by at least sixty-five ( 65) percent of the qualified voters of the Tribe. A petition of no confidence shall not require grounds for removal but shall only require the attestation of each signer that they no longer have confidence in the official as a member of the Executive Committee. The petition shall be presented to the Secretary or the President if the affected official is the Secretary. Upon receipt of such properly executed petition, the official shall be given the option to resign, and if he or she does not resign, the Secretary or President as appropriate shall call and give at least fifteen days notice of a meeting of the General Council. The official shall have the opportunity to respond to the petition at the meeting. The General Council shall then vote upon removal and such removal shall become effective upon majority vote. If the vote is in favor of removal, the vacancy thereby created shall be filled by a special election called by the Election Board and conducted in accordance with the election provisions.

### Little River Band of Ottawa

## Article X

Section 4. Vacancies. A vacancy in the office of the Tribal Ogema or on the Tribal Council resulting from death, resignation, forfeiture, removal, or recall shall be filled as follows: (a) If less than eighteen (18) months remain in the term of office for the Tribal Ogema or Tribal Council member, an individual shall be appointed to full such vacant position at the next regular Tribal Council meeting, provided such appointment is approved by a majority vote of the Tribal Council. The Speaker of the Tribal Council shall nominate an individual to fill the vacancy in the Office of the Tribal Ogema. The Tribal Ogema shall nominate an individual to fill a vacancy on the Tribal Council. (b) If more than eighteen months remain in the term of office for the Tribal Ogema or a Tribal Council member, a special election shall be held within three (3) months after the vacancy occurs. When calling a special election to fill the vacancy of a Tribal Council member, the qualifications for candidates and registered voters entitled to participate shall be consistent with those applicable to the District in which such vacant seat exists. (c) Any special election required to be held under this Section shall be conducted in accordance with applicable provisions of this Constitution, any applicable tribal ordinance and any rules and regulations issued by the Election Board. (d) The Tribal Ogema or Tribal Council member taking office under the provisions of this Section shall only serve until the term of office for the vacant office he/she is filling expires.

## Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation

### Article VI

Section 1. The Tribal Executive Board shall declare a position on the Board vacant whenever a member shall die, resign, be removed or recalled from office. Such vacancies shall be filled as follows:

(a) If the office of Chairman shall become vacant, the Vice-Chairman shall become Chairman, and the office of Vice-Chairman shall then be filled as provided in Subsection (b) of this Section.

(b) If the office of Vice-Chairman shall become vacant, it shall be automatically filled by the person who received the next highest number of cumulative legal votes from all districts for the office of Vice-Chairman at the previous election who meets the qualifications for that office on the date he or she takes office, and who is willing to serve as Vice-Chairman.

(c) If the office of Secretary/Accountant shall become vacant, a successor shall be appointed for the remainder of his or her term as provided in Article IV, Section 3 and 5.

(d) If the office of Sergeant-at-Arms shall become vacant, it shall be automatically filled by the person who received the next highest number of cumulative legal votes from all districts for the office of Sergeant-at-Arms at the previous election, who meets the qualifications for that office on the date he or she

takes office; and who is willing to serve as a member of the Board.

(e) If any other seat on the Tribal Executive Board shall become vacant, it shall be automatically filled by the person who received the highest number of cumulative votes from all districts in the previous election, who meets the qualifications for office on the date he or she takes office, who is not a member of the Board on the date he or she takes office; and who is willing to serve as a member of the Board.

(f) If a vacancy shall remain in any office for a reason, the Board may schedule a special election to fill the vacancy.

Section 2. A Board member or officer of the Board, may be removed from office by the Board, after having been given twenty (20) days notice in writing by the Secretary, and a chance to be heard. Causes for removal are:

(a) Permanent change of residence from the Reservation.

(b) Conviction in any court of a felony while in office, and/or any course of conduct prejudicial to the Tribes.

(c) Failure to attend three (3) regular meeting in succession, except that the Tribal Executive Board may approve reasonable grounds for nonattendance.

(d) The Tribal Executive Board shall by duly enacted ordinances establish such procedures and regulations necessary to carry out the intent of this article.

(e) All questions which cannot be resolved by the Tribal Executive Board shall be referred to the Fort Peck General Council.

### Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians

#### Article IX

##### Section 1. Vacancies.

(a) In the event a tribal council position becomes vacant, such position shall be filled by a majority vote of the tribal council from names nominated by tribal council members. Such person, if qualified under Section 4(a) of Article VIII, shall assume office to fill the unexpired term of his or her predecessor in office.

(b) If a tribal council member fails to attend three (3) consecutive regular meetings of the tribal council, unless his or her written excuse is accepted by a majority vote of the other members of the tribal council, that member's seat shall be declared vacant and shall be filled in accordance with subsection (a) of this section.

(c) If the entire tribal council shall become vacant through death, removal, recall or resignation, or is unable to function due to loss of a quorum, tribal council members shall be elected to fill the unexpired term of each tribal council position. Such election shall occur at a special meeting of the general council, the vote to be

taken in the manner provided for in elections at the April general council meeting.

(d) If the tribal chief is the sole remaining council member, the tribal chief shall have authority to call a special council election within sixty (60) days. Until such election is held, the chief shall exercise the authority of the tribal council.

## Ho-Chunk Nation

### Article IX

Section 8. Vacancies in the Judiciary. If a vacancy occurs in an office of the Supreme Court because of death, mental or physical incapacity, removal or recall vote, or any other reason, such vacancy shall be filled in the following manner: (a) If twelve (12) months or more remain before the next General Election, the Election Board shall call a Special Election in accordance with Article VIII. (b) If less than twelve (12) months remains before the next General Election, the Legislature shall fill the office by appointment.

Section 9. Vacancy of the Office of the President. If the office of the President becomes vacant by reason of death, mental or physical incapacity, removal or recall vote, resignation, or for any other reason, such vacancy shall be filled in the following manner: (a) If twelve (12) months or more remain before the next General Election, the Vice President shall serve as President pro tempore and the Election Board shall call a Special Election in accordance with Article VIII. Upon election of a President at a Special Election, the Vice President shall reassume his seat on the Legislature for the remainder of his term, if any. (b) If less than twelve (12) months remain before the next General Election, the Vice President shall serve as President pro tempore. If less than twelve (12) months but more than three (3) months remain before the next General Election, the Election Board shall call a Special Election in the appropriate District within thirty (30) days to fill the seat vacated by the Vice President. Upon election of a President at the next General Election, the Vice President shall reassume his seat on the Legislature for the remainder of his term, if any. (c) If less than three (3) months remain before the next General Election, the office shall remain vacant. (d) A Vice President serving in the capacity of President pro tempore shall not vote in the Legislature except to cast the deciding vote in case of a tie.

Section 10. Vacancies in the Legislature. If a vacancy occurs in the Legislature because of death, mental or physical incapacity, removal or recall vote, or for any other reason, such vacancy shall be filled in the following manner: (a) If three (3) months or more remain before the next General Election, the Election Board shall call a Special Election in the appropriate District to be held within thirty (30) days. (b) If less than three (3) months remains before the next General Election, the seat shall remain vacant, except when the Vice President assumes the office of the President pursuant to Section 9(b) of this Article, an election to fill that vacancy shall be held within thirty (30) days.

Section 11. Terms for Vacancies. Persons elected or appointed to fill a vacancy in the Judiciary, the Office of the President, or the Legislature shall serve out the term of the person whom they are replacing.

Please contact me if there are any questions.