

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

District of North Dakota

United States of America)

v.)

FRANK CHARLES GRADY)

Case No. 1:20-mj-336

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 2016-2018 in the county of McKenzie in the District of North Dakota, the defendant(s) violated:

Code Section	Offense Description
18 USC 371	Conspiracy
18 USC 666(a)(1)(B)	Bribery Concerning Programs Receiving Federal Funds

This criminal complaint is based on these facts:

See affidavits.

Continued on the attached sheet.

[Handwritten signature of Jacob W. O'Connell]

Complainant's signature

O'Connell, Jacob W. Special Agent (FBI)

Printed name and title

[Handwritten signature of Alice R. Senechal]

Judge's signature

Alice R. Senechal U.S. Magistrate Judge

Printed name and title

via telephone.

Sworn to before me and signed in my presence

Date: 07/28/2020

City and state: Fargo, North Dakota (via Telephone)

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Special Agent Jacob W. O'Connell, being duly sworn on oath, depose and state as follows:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been employed in such capacity since 2002. I am currently assigned to the FBI Resident Agency in Bismarck, North Dakota. My duties include the investigation of fraud and public corruption crimes occurring within the District of North Dakota. Since joining the FBI, I have received training in general law enforcement and criminal investigations, and specific training in public corruption investigations. I have participated in investigations involving financial fraud and other criminal activity both within, and outside, the external boundaries of the Fort Berthold Indian Reservation (FBIR) located within the District of North Dakota.

2. As a Special Agent with the FBI, I have authority to investigate violations of federal law. I also have authority to seek and execute federal process, to include criminal complaints. I make this affidavit in support of a criminal complaint charging FRANK CHARLES GRADY (GRADY) with the offenses of Conspiracy, in violation of Title 18, United States Code, Section 371; and Bribery Concerning Programs Receiving Federal Funds, in violation of Title 18, United States Code, Section 666(a)(1)(B). Specifically, between January 2016 and September 2017, within the District of North Dakota and elsewhere, the defendant FRANK CHARLES GRADY, being an agent of an Indian tribal government, did conspire to and did corruptly solicit and demand, accept and agree to accept things of value, intending to be influenced and rewarded in connection with any business, transaction, and series of transactions of the Three Affiliated Tribes (TAT) of the Mandan, Hidatsa, and Arikara Nation (MHA Nation) involving \$5,000 or more.

3. The information in this affidavit is based on my personal knowledge and information provided to me by other law enforcement officers and by individuals interviewed during the course of this investigation. The information in this affidavit is provided for the limited purpose of establishing probable cause for a criminal complaint. As this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included every fact known to me concerning this investigation. Where conversations between individuals are related, they are presented in sum and substance and are not verbatim.

PROBABLE CAUSE

4. The FBIR, which is the home of the MHA Nation, is divided into six segments: the West Segment, the North Segment, the Four Bears Segment, the Parshall Segment, the White Shield Segment, and the Twin Buttes Segment. Each segment elects one representative on the MHA Nation Tribal Business Council (TBC), the governing body of the TAT. A seventh seat is held by the MHA Nation's elected Chairman. Funding requests, budget approval, legislative matters, and special projects approvals all fall under the purview of the TBC. In all years relevant to this complaint, the MHA Nation received in excess of \$10,000 in federal benefits through programs of the United States Government.

5. Each segment receives an annual, multi-million dollar allocation of funds from the TAT General Fund. Many segments, including the Four Bears Segment, deposit this allocation into the segment's economic development corporation (EDC) account. Expenditures from a segment's allocation are not subject to TBC oversight, and the TBC representative has significant discretion as to the spending of the segment's allocation.

6. In or about November 2014, GRADY was elected to be the TBC representative for the Four Bears Segment (FBS), a position that he held until he was voted out of office in November

2018. GRADY is an enrolled member of the MHA Nation. At all times relevant to this complaint, GRADY was an agent and elected representative of the MHA Nation tribal government.

7. CC-1 is the owner of a business providing construction services on the FBIR since in or about 2012. CC-1 has pleaded guilty pursuant to an information to one count of Bribery Concerning Programs Receiving Federal Funds, in violation of Title 18, United States Code, Section 666(a)(2), in connection with bribes and kickbacks paid to GRADY. CC-1 admitted that he or she paid GRADY in order to influence and reward GRADY for using his official position to hire CC-1 to perform work on the FBIR, to influence others to hire CC-1 to perform work on the FBIR, and to facilitate the payment of CC-1's invoices from MHA Nation funds. CC-1 is cooperating with the government's investigation with the objective, at least in part, of receiving a reduced sentence.

8. CC-2 is an enrolled member of the MHA Nation who was hired by GRADY shortly after his election in 2014 and soon promoted to serve as his chief of staff until he or she, along with other FBS employees, was fired by GRADY in or about August 2017.

9. CC-2 has pleaded guilty pursuant to an information to one count of Bribery Concerning Programs Receiving Federal funds, in violation of Title 18, United States Code, Section 666(a)(1)(B), in connection with his or her receipt of bribes and kickbacks from CC-1. CC-2 is cooperating with the government's investigation with the objective, at least in part, of receiving a reduced sentence. CC-2 admitted that, in exchange for bribes and kickbacks, and at GRADY's direction, CC-2 used his or her official position to prepare and facilitate the payment of invoices for CC-1's companies, knowing those invoices to be false and fraudulent, and to facilitate CC-1's obtaining work in the FBS. CC-2 also admitted that he or she facilitated the payment of bribes and kickbacks from CC-1 to GRADY.

10. From in or around January 2016 and continuing through at least in or around September 2017, GRADY corruptly solicited and accepted bribes and kickbacks from CC-1 with the intent to be influenced and rewarded in connection with CC-1's business's operation on the FBIR.

11. Analysis conducted by the FBI's forensic accountants of subpoenaed bank records shows that between in or around January 2012 and in or around January 2020, CC-1's business was paid over \$17,250,000 by the MHA Nation and its subsidiary segments in connection with business conducted on the FBIR. In particular, CC-1 was paid at least \$887,453.22 by checks issued from a bank account maintained by the FBS EDC (FBEDC) between in or around November 2016 and in or around January 2018. Payments for projects within a segment may also be paid for out of the centralized TAT General Fund.

12. Beginning in or around January 2016, GRADY, CC-1, and CC-2 knowingly devised a scheme to defraud the MHA Nation of money by causing and facilitating the submission and payment of false and fraudulent invoices for construction and other projects paid for with tribal funds in exchange for the public officials' receiving bribes and kickbacks.

13. Analysis conducted by the FBI's forensic accountants of subpoenaed bank records shows that between in or around January 2016 and in or around September 2017, GRADY received approximately \$264,000 via nineteen checks and two wire transfers from company bank accounts controlled by CC-1. Financial analysis further shows that a number of the payments to GRADY coincided closely — within one day — with payments to CC-1 from the FBEDC account or from MHA Nation Finance in connection with a project within the FBS, confirming that the payments to GRADY were kickbacks from tribal payments to CC-1. (Unless otherwise noted, checks were dated the same date as they were deposited.)

- a. On or about August 19, 2016, a TAT check for \$40,000 dated August 18, 2016 was deposited into an account controlled by CC-1. On or about August 22, 2016, a \$10,000 check dated August 18, 2016 from an account controlled by CC-1 was deposited into an account controlled by GRADY.
- b. On or about November 4, 2016, an FBEDC check for \$50,000 was deposited into an account controlled by CC-1. On or about November 8, 2016, a \$10,000 check dated November 4, 2016 from an account controlled by CC-1 was deposited into an account controlled by GRADY.
- c. On or about November 17, 2016, an FBEDC check for \$75,000 was deposited into an account controlled by CC-1. On or about November 21, 2017, a \$20,000 check dated November 17, 2016 from an account controlled by CC-1 was deposited into an account controlled by GRADY.
- d. On or about December 12, 2016, an FBEDC check dated December 9, 2016 for \$125,000 was deposited into an account controlled by CC-1. On or about December 27, 2016, a \$20,000 check dated December 9, 2016 from an account controlled by CC-1 was deposited into an account controlled by GRADY.
- e. On or about February 15, 2017, an FBEDC check dated February 14, 2017 for \$50,000 was deposited into an account controlled by CC-1. On or about February 16, 2017, a \$15,000 wire transfer from an account controlled by CC-1 was deposited into an account controlled by GRADY.
- f. On or about March 3, 2017, an FBEDC check for \$60,000 was deposited into an account controlled by CC-1. That same day, a \$20,000 check dated March

2, 2017 from an account controlled by CC-1 was deposited into an account controlled by GRADY.

14. According to CC-1, he or she would provide an estimate to GRADY and/or CC-2 for work performed in the FBS, and CC-2 would prepare invoices on behalf of CC-1's business. According to CC-2, GRADY would tell him or her the amount to put on the invoices that he or she prepared. CC-1 understood that the excess over the estimate was to be kicked back to GRADY and/or CC-2.

15. In addition to awarding projects directly to CC-1's business, GRADY used his position at the FBS TBC representative to secure subcontracting work for CC-1 on the Thomas "Johnny" Bird Veterans Memorial Hall (JBVMH) construction project located within the FBS.

- a. On January 20, 2018, a confidential human source provided an email chain with the subject line "Johnny Bird Sub contractors" that originated from [CC-2]@mhanation.com. The first email in the chain, dated July 15, 2016, included the signature line "[CC-2] – Special Projects Three Affiliated Tribes Four Bears Segment Office – Councilman Frank Grady" at the bottom. In the email, CC-2 wrote:

Frank's other contractor is [CC-1's company] [his or her] contact number is []. [The contractor] expressed interest in bid package # 7A, 7F, 8A, 9B, 9E, 9F, 10C, 32A, 32B, basically [the contractor] can do drywall, painting, flooring, landscaping, finish work etc. Although [the contractor] is not a Tier 1 contractor [he or she] is a major contributor to all community events and is a great asset to Four Bears and Councilman Grady would like [his or her] involvement.

CC-2 confirmed that GRADY instructed him or her to solicit subcontracting work for CC-1 on the JBVMH project.

- b. The general contractor for the JBVMH project received a memorandum dated July 7, 2016 from a TAT Project Manager on which both GRADY and CC-2 were cc'd. The memo stated:

This memo is in reference to Councilman Grady's request that his preferred contractor, [CC-1], be considered to perform the following duties for the Thomas M. (Johnny) Bird Veterans Memorial Hall project: Finish Work, Sheetrock, Painting/Drywall, Flat Work (sidewalks, curb and gutter), Tile Work.

- c. Financial records reviewed by the FBI and statements made by CC-1 confirm that he or she was paid for subcontracting work in connection with the JBVMH project.

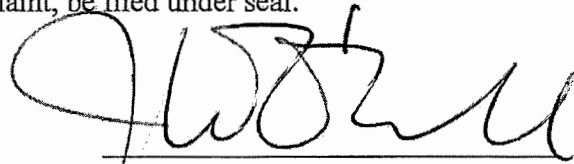
16. Projects awarded to CC-1 also included individual home renovations and/or repairs for enrolled members residing in the FBS. In addition to awarding certain projects within his discretion to CC-1, GRADY also regularly successfully advocated for CC-1 in connection with projects requiring centralized TAT funding and therefore TBC approval.

17. During the course of this investigation, Federal Grand Jury subpoenas were served on cellular telephone providers to obtain subscriber and toll records for telephone numbers known to be utilized by CC-1 and GRADY. Analysis of the records revealed that GRADY had regular contact with CC-1 during the time period of January 2016 through February 2018.

18. On or about November 28, 2018, GRADY was interviewed telephonically by the FBI. GRADY denied taking bribes or kickbacks from anyone or otherwise embezzling project funds while serving as a TBC representative.

19. Based on my training and experience and the facts as set forth in this affidavit, your affiant respectfully submits that there is probable cause to believe that FRANK CHARLES GRADY has violated Title 18, United States Code, Section 371 (Conspiracy); and Title 18, United

States Code, Section 666(a)(1)(B) (Bribery Concerning Programs Receiving Federal Funds), in the District of North Dakota and elsewhere, and therefore a warrant should issue for his arrest. Because public filing of this document could result in a risk of flight by the defendant, as well as jeopardize the government's ongoing investigation by notifying confederates and co-conspirators of the pending investigation, your affiant respectfully requests that this complaint, as well as any arrest warrants issued in connection with this complaint, be filed under seal.



Special Agent Jacob W. O'Connell
Federal Bureau of Investigation

Subscribed to and sworn pursuant to Fed. R. Crim. P. 4.1 on this ^{28th} day of July, 2020, via telephone.



Alice R. Senechal
United States Magistrate Judge