

CHAPTER 2 ETHICAL CONDUCT

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Section 2.000 Purpose and Definitions

2.001 Purpose. The purpose of this Chapter is to provide for and guide the professional conduct of judges, court clerks, magistrates and administrator of this Court, Peacemakers, as well as lawyers and lay advocates who practice before this Court.

2.002 Definitions. When used in this Chapter, unless the content otherwise indicates:

- (A) "Attorney" means an individual who is a current member of the State Bar of Michigan or some other state. The term "attorney" is synonymous with the term "lawyer." Further, a lawyer must be admitted to practice before this Court pursuant to Chapter 3 herein.
- (B) "Court" means the Tribal Court of the Little River band of Ottawa Indians.
- (C) "Tribe" means the Little River Band of Ottawa Indians.
- (D) "Lawyer" is synonymous with the term "attorney". Further, a lawyer must be admitted to practice before this Court pursuant to Chapter 3 herein.
- (E) "Lay Advocate" means a person who is a non-lawyer and who has been qualified by this Court to serve as an advocate on behalf of a party. Further, a lay advocate must be admitted to practice before this Court pursuant to Chapter 3 herein.
- (F) "Court Personnel" means any personnel employed with Court including but not limited to the following: judge, clerk, magistrate, Peacemaker, or court administrative.
- (G) "Tribal Council" means the legislative body of the Tribe, whether elected or appointed, who makes or legislates the law; Tribal Council is synonymous with the term Executive Council

Section 2.100 Judicial Conduct

2.101 Applicability of this Code of Judicial Conduct. This Code applies to anyone, whether or not a lawyer, who is an officer of a tribal judicial system and is performing judicial functions. Also, this Code applies to both trial and appellate tribal judges, who serve the Court on a full-time, part-time or pro tempore basis.

2.102 Integrity and Independence of Tribal Judiciary. A tribal court judge should uphold the integrity and independence of the tribal judiciary in that an independent and honorable tribal judiciary is indispensable to justice in the tribal community. A judge should participate in establishing, maintaining, and enforcing, and should himself or herself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is

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for the benefit of the litigant(s) and the public, not the judiciary. The provisions of this Code (Section 2.101 through 2.110, inclusive) should be construed and applied to further these objectives.

2.103 Impropriety and the Appearance of Impropriety. A tribal court judge should avoid all impropriety and the appearance of impropriety in all his/her activities. In addition, a tribal judge:

- (A) Should respect and comply with the law and tradition of the Tribe and at all times should act in a manner that promotes public confidence in the integrity and impartiality of the tribal judiciary;
- (B) Should not allow family, social or other relationships to influence his/her judicial conduct. S/he should not attempt to use the prestige of the office to advance the private interests of himself/herself or others, nor should s/he convey the impression that anyone has special influence on the judge; and
- (C) Shall not appear as a witness in a court proceeding unless subpoenaed.

2.104 Performance of Duties Impartially and Diligently. A tribal court judge should perform the duties of the office impartially and diligently. The judicial activities of a tribal judge should take precedence over all other activities. The judicial duties of the judge include all the duties of the office as prescribed by tribal law, custom or tradition. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities:

(1) A tribal court judge should adhere to the laws, and should recognize and employ the customs and traditions of the Tribe where appropriate. S/he should not be swayed by partisan interests, public clamor, political pressure, or fear of criticism, and shall resist influences on the Court by other tribal officials, governmental officials or any others attempting to improperly influence the Court.

(2) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, lay advocates and others with whom s/he deals in his/her official capacity and should require similar conduct of other persons in court proceedings and those court personnel who are subject to the judge's direction and control.

(3) A tribal court judge should accord to every person who is legally interested in any proceeding, or his/her lawyer or other representative, full right to be heard according to tribal law and tradition, and except as authorized by law, neither consider nor permit ex parte or other communication with a litigant or his/her attorney or lay advocate concerning a pending or impending proceeding unless all representatives of the parties to the proceeding are present.

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(4) A tribal court judge shall maintain order in the Court. S/he should not interfere in the proceedings except where necessary to protect the rights of the parties.

(5) A tribal court judge should dispose promptly of the business of the Court.

(6) A tribal court judge shall not comment publicly on any pending Court proceeding and should also prohibit other court personnel from making such public comment. However, this subsection does not prohibit a judge from making public statements in the course of his/her official duties or from explaining for public information the procedures of the Court or his/her holdings or actions.

(B) Administrative Responsibilities:

(1) A judge shall diligently perform his/her administrative responsibilities with a high degree of integrity and diligence.

(2) A judge shall require his/her staff and court officials to observe high standards of integrity and diligence. As such, a judge shall direct his/her staff and court officials subject to his/her control to observe high standards of fidelity, diligence and courtesy to litigants, jurors, witnesses, lawyers, lay advocates and others with whom they deal in their official capacity.

(3) A judge should initiate appropriate disciplinary measures against a judge, lawyer, lay advocate, or court personnel for non-professional conduct of which the judge may become aware.

(C) Disqualification:

(1) A Judge should disqualify himself/herself in a proceeding in which his/her impartiality might reasonably be questioned, including instances where:

(a) The Judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;

(b) The Judge served as a lawyer, advocate, or personal representative concerning a party that has a matter before the Court;

(c) The Judge knows that s/he individually (or any person who resides in the same household) has a financial interest in the subject matter of the controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or

(d) The Judge or his/her spouse, or a person in a reasonably close family relationship to either of them, or the spouse of such a person:

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- (i) is a party to the proceeding, or an officer, director, or trustee of a party; or
- (ii) is acting as a lawyer or lay advocate in the proceeding; or
- (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
- (iv) is to the Judge's knowledge likely to be a material witness in the proceeding.

(D) Alternative to disqualification. A Judge disqualified pursuant to Section 2.104 (C)(1) hereunder may, instead of withdrawing from the proceeding, disclose on the record the basis of his/her disqualification. If based upon such disclosure the parties and lawyers or lay advocates, independent of the Judge's participation, all agree in writing that the Judge's participation is not prejudicial or that the Judge's financial interest is insubstantial, the Judge is no longer disqualified, and may participate in the proceeding.

2.105 Improvement of the Legal System and the Administration of Justice. A Judge may engage in activities to improve the law, the legal system and the administration of justice; in fact, to the extent that his/her time permits, s/he is encouraged to do so, either independently or through a legal/judicial association, judicial conference, or other organization dedicated to the improvement of the law. Therefore, a Judge, subject to the proper performance of his/her judicial duties, may engage in the following activities:

- (A) The Judge may speak, write, lecture, teach and participate in other activities concerning tribal law and custom, the legal system of the Tribe, the administration of justice, and the law in general;
- (B) The Judge may appear at a public hearing before a tribal executive or legislative body or official on matters concerning the tribal legal system and the administration of justice of general concern to tribal members, or of personal concern. When speaking to the public, press, or others on matters other than the administration of tribal justice, the Judge shall not identify himself/herself as the Judge and shall make it clear that s/he is not speaking in his/her capacity as tribal Judge; and
- (C) The Judge may serve as a member, officer, or director of an organization or tribal governmental agency devoted to the improvement of tribal law, its legal system or the administration of justice. The Judge may assist such an organization in raising funds and may participate in the management and investment of such funds. S/he may make recommendations to public and private fund-granting agencies on projects and programs concerning tribal law, its legal system and the administration of justice.

2.106 Extra-Judicial Activities.

(A) Avocational Activities: A Judge may write, lecture, teach, speak, and consult on non-legal subjects, appear before public non-legal bodies, and engage in the arts, sports, and other social and recreational activities, provided such avocational activities do not

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detract from the dignity of his/her office or interfere with the performance of his/her judicial duties.

(B) Civic and Charitable Activities: A Judge may participate in civic and charitable activities that do not reflect adversely upon his/her impartiality or interfere with the performance of his/her judicial duties. A Judge may serve as an officer, director, trustee or non-legal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization, whether tribal or otherwise, provided that a Judge does not participate if it is likely that the organization will be involved in proceedings which would ordinarily come before him/her or would be involved in adversarial proceedings in any tribal court.

(C) Financial Activities:

(1) A Judge should avoid financial and business dealings that tend to reflect adversely on his/her judicial duties, exploit his/her judicial position, or involve him/her in frequent business transactions with lawyers or others likely to come before the Court on which s/he serves.

(2) Because it is recognized that the position of Judge may be a part-time position, such judge may accept other employment and participate in the operation of a business, legal or otherwise in nature, subject to the following:

(a) A part-time Judge should not practice law either as a lawyer or an advocate:

(i) in the Court in which he or she serves; or

(ii) in any Court subject to the appellate jurisdiction of this Court which he or she serves; and

(b) A part-time Judge should not act as a lawyer or advocate in any proceeding in which he or she has judicially served or in any related proceeding.

(3) Neither a Judge nor a member of his/her family residing in his/her household should accept a gift, bequest, favor, or loan from anyone if the same would affect or appear to affect his/her impartiality.

(D) Extra-Judicial Appointments: A Judge should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A Judge may represent the Tribe on ceremonial occasions or in connection with historical, educational, and/or cultural activities.

2.107 Political Activities.

(A) A Judge should refrain from political activity inappropriate to his/her judicial office. However, a judge or candidate for judicial office may attend political gatherings;

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speak to such gatherings on his/her own behalf or on behalf of other judicial candidates; and/or contribute to a political party.

(B) A Judge shall not be a candidate for, or serve on the Tribal Council, or as Ogema nor shall a Judge be actively involved in the campaign of another for Tribal Council or Ogema.

(C) A Judge should refrain from all political activities or actions which could be interpreted in the tribal community as supporting any political position except that the community has the right and the responsibility to govern its own members and its own territory. All actions should be consistent with this belief and supportive of this community standard. This prohibition does not mean that a Judge cannot, if s/he chooses, engage in activities of electoral politics at the local, state, or national level. This prohibition is specific as to politics adversely affecting the jurisdictional rights of the tribal community.

(D) A candidate, including an incumbent Judge, for a judicial office that is filled by tribal election or appointment:

(1) Should maintain the dignity appropriate to the judicial office and should refrain from any political activity which might interfere with the performance of his/her judicial duties. Further, a Judge should encourage members of his/her family to adhere to the same standards of political conduct that apply to him/her; and/or

(2) Should not make pledges or promises of conduct in judicial office other than the faithful and impartial performance of the duties of the office, nor announce his/her views on disputed legal or political issues.

2.108 Continuing Educational Activities. A judge, regardless of their education and experiences, should seek further legal and pertinent non-legal education designed to improve their performance as a judge.

2.109 Short Title. This Code shall be known and may be cited as the "Code of Tribal Judicial Conduct".

2.110 Effective Date. This Code becomes effective on July 10, 1998 (Constitutional Ref.).
As amended October 9, 2009 (Court Administrative Order)

Section 2.200 Code of Conduct for Tribal Court Clerks, Magistrates, Administrators Peacemakers and Other Court Personnel

2.201 Applicability of this Code of Court Personnel. This Code applies to court clerks, court magistrates, court administrators, Peacemakers, or other similar court

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personnel who are employed within a tribal judicial system, whether such employment is on a full-time, part-time or pro tempore basis.

2.202 Integrity and Independence of Court Personnel. Court personnel should uphold the integrity and independence of the judiciary and of the court personnel's office in that an independent and honorable judiciary is indispensable to justice in the tribal community. Therefore, court personnel should observe and impart to other court personnel high standards of conduct so that the integrity and the independence of the judiciary may be preserved and so that the court personnel's office may reflect a devotion to serving the public. The provisions of this Code (Sections 2.201 through 2.210, inclusive) should be construed and applied to further these objectives. The standards of this section shall not affect or preclude other standards which may be promulgated by the Court.

2.203 Impropriety and the Appearance of Impropriety. Court personnel should not engage in any activity which would put into question the propriety of conduct in carrying out the duties of the office, including but not limited to the following:

- (A) Court personnel shall not allow family, social, or other relationships to influence official conduct or judgment. Court personnel shall not lend the prestige of their office to advance the interests of himself/herself or others, nor should court personnel convey, or others be permitted to convey, the impression that they are in a special position to influence the court personnel;
- (B) Court personnel, as well as family member(s) who reside in the same household as the court personnel, should not accept a gift, bequest, favor, or loan from any person whose interests have come, or are likely to come, before said court personnel or from any other person under circumstances which might reasonably be regarded as influencing the performances of the duties of the office;
- (C) Court personnel should abstain from public comment about pending or impending Court proceedings and should require similar abstention on the part of other court personnel. Court personnel should never disclose to any person any confidential information received in the course of official business, nor should such information be employed for personal gain;
- (D) Court personnel should avoid favoritism, unfairness, or nepotism in connection with the hiring, discharge, or treatment of subordinate court staff;
- (E) Court personnel should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the Court in a biased manner, which improperly favors any litigant or attorney or other representative, nor imply that such court personnel is in a position to do so; and/or
- (F) Court personnel should not practice law.

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2.204 Performance of Duties Impartially and Diligently. The official duties of court personnel take precedence over all activities. The official duties include all the duties of the court personnel's respective office as prescribed by law or by order of the tribal court. In the performance of these duties, the following standards apply:

(A) Court personnel should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the tribal judiciary and the respective court personnel's office; and

(B) Court personnel should be faithful to the highest standard of the profession and maintain professional competence in it. Also, court personnel should be patient, dignified, courteous, and fair to all persons whom s/he has contact with in an official capacity such as litigants, jurors, witnesses, lawyers, lay advocates and others, and should require similar conduct from subordinate staff and others subject to his/her direction and control.

2.205 Improvement of the Legal System and the Administration of Justice. Court personnel, subject to the proper performance of official duties, may engage in the following quasi-official activities:

(A) Court personnel may speak, write, lecture, teach and participate in other activities concerning court management, the legal system, and the administration of justice; and

(B) Court personnel may promote the development of professional organizations and foster the interchange of technical information and experience with others in the profession. Court personnel should be available to the public-at-large for speaking engagements and public appearances designed to enhance the public's knowledge of the operation of the tribal court system.

2.206 Extra-Official Activities.

(A) Avocational Activities: Court personnel may write, lecture, teach, and speak on subjects unrelated to the profession, and may engage in the arts, sports, and other social and recreational activities, provided such avocational activities do not detract from the dignity of the office, interfere with performance of official duties, or adversely reflect on the operation and dignity of the Court.

(B) Civic and Charitable Activities: Court personnel may participate in civic and charitable activities that do not detract from the dignity of the office or interfere with the performance of official duties. Court personnel may serve as an officer, director, trustee or advisor of a civic or charitable organization and solicit funds for any such organization, subject to the following limitations:

(1) Court personnel should not use or permit the use of the prestige of the court personnel's office in the solicitation of funds;

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(2) Court personnel should not solicit subordinate staff to contribute to or participate in any civic or charitable activity, but may call their attention to a general fund-raising campaign such as the United Way; and

(3) Court personnel should not solicit funds from lawyers or persons likely to come before the respective court personnel's office or the Court served.

(C) Financial Activities: Without the express permission of the Court, court personnel may not carry on financial and business dealings, including services as a fiduciary. Such permission shall not be granted in any case where the activity would tend to reflect adversely on impartiality, interfere with the proper performance of official duties, exploit an official position, or come before the respective court personnel's office or the Court served.

(D) Extra-Official Appointments: Court personnel should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.

(E) Compensation for Quasi-Official and Extra-Official Activities: Court personnel may from time to time receive compensation for certain quasi-official and extra-official activities permitted by this Code (e.g. such as the preparation of a hearing or trial transcript for a party) if the source of such payment does not influence or give the appearance of influencing the court personnel in the performance of official duties or otherwise give the appearance of impropriety, subject to the following:

(1) Compensation: Compensation should not exceed a reasonable amount nor should it exceed that normally received by others for the same activity; and

(2) Records: Court personnel must keep records and file reports of such compensation as may be required by tribal law or court rule.

2.207 Political Activities. Court personnel may engage in political activity that does not tend to reflect adversely on the dignity of the Court or the respective court personnel's office or interfere with the proper performance of official duties.

2.208 Short Title. This Code shall be known and be cited as the "Code of Conduct for Tribal Court Clerks, Magistrates, Administrators and Other Court Personnel."

2.209 Effective Date. This Code shall become effective on July 10, 1998 Constitutional Ref.)

As Amended on October 9, 2009. (Administrative Order)

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Section 2.300 Code of Ethics for Lawyers and Lay Advocates

2.301 Applicability of this Code of Ethics for Lawyers and Lay Advocates. This Code shall apply to all persons, whether licensed attorneys or lay advocates, who are admitted to practice before the Court. It is recognized that attorneys who are admitted to practice before the Court are also members of the State Bar of Michigan or some other State and are therefore subject to discipline under the appropriate State ethical rules. This Code is not intended to preempt or supersede any State authority to discipline attorneys for any conduct prohibited by this Code.

COMMENT: This Code of Ethics is primarily based on the Michigan Rules of Professional Conduct. However, the Tribe made changes in said Rules to conform the same to tribal law, custom and preferred practice.

2.302 Purpose. This Code is adopted both as an inspirational guide to the persons practicing before the Tribal Court and as a basis for disciplinary action when the conduct of a person falls below the required minimum standards stated in the rules set forth below.

2.303 Definitions. When used in this Subchapter (2.301 through 2.313, inclusive) the following definitions apply in addition or supplemental to the terms defined in Sections 2.002, unless the content otherwise indicates:

(A) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances, traditions and customs.

(B) "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(C) "Firm" or "law firm" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization, and lawyers employed in a legal services organization.

(D) "Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or the failure to apprise another of relevant information.

(E) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.

(F) "Lawyer" or "attorney" includes a lay advocate admitted to practice before Tribal Court.

(G) "Partner" denotes a member of a partnership and/or a shareholder in a law firm organized as a professional corporation.

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(H) "Person" includes a corporation, an association, a trust, a partnership or any other organization or legal entity.

(I) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.

(J) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(K) "Reasonably should know" when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(L) "Substantial" when used in reference to degree or extent, denotes a material matter of clear and weighty importance.

(M) "Tribal Court" means the Tribal Court of the Little River Band of Ottawa Indians.

2.304 Client - Lawyer Relationship. The following provisions apply to the client-lawyer relationship:

(A) Competence. A lawyer shall provide competent representation to a client. A lawyer shall not:

(1) Handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it;

(2) Handle a legal matter without preparation adequate in the circumstances;
or

(3) Neglect a legal matter entrusted to the lawyer.

(B) Scope of Representation.

(1) A lawyer shall seek the lawful objectives of a client through reasonably available means permitted by law and this Code. A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to accept an offer of settlement or mediation evaluation of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial, and whether the client will testify. In representing a client, a lawyer may, where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.

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(2) A lawyer may limit the objectives of the representation if the client consents after consultation.

(3) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law.

(4) When a lawyer knows that a client expects assistance not permitted by this Code or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

(C) Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

(D) Communication.

(1) A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, mediation evaluations, and proposed plea bargains.

(2) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(E) Fees.

(1) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

(a) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(b) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(c) the fee customarily charged in the locality for similar legal services;

(d) the amount involved and the results obtained;

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- (e) the time limitations imposed by the client or by the circumstances;
 - (f) the nature and length of the professional relationship with the client;
 - (g) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (h) whether the fee is fixed or contingent.
- (2) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
- (3) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (4) below or by other law. A contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined. Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement of the outcome of the matter and, if there is a recovery, show the remittance to the client and the method of its determination.
- (4) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee in a domestic relations matter or in a criminal matter.
- (5) A division of a fee between lawyers who are not in the same firm may be made only if:
- (a) the client is advised of and does not object to the participation of all lawyers involved; and
 - (b) the total fee is reasonable.

COMMENT: As to Section 2.304(E), consideration should be given as to whether this provision should apply to lay advocates or whether a modified version of this provision be enacted for lay advocates. **Note:** Pursuant to 2.303(F), the term lawyer is deemed to include lay advocates unless specifically indicated otherwise. Also, See Section 2.308(D).

(F) Confidentiality of Information.

(1) "Confidence" refers to information protected by the client-lawyer privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

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(2) Except when permitted under paragraph (3) below, a lawyer shall not knowingly:

- (a) reveal a confidence or secret of a client;
- (b) use a confidence or secret of a client to the disadvantage of the client; or
- (c) use a confidence or secret of a client to the disadvantage of the lawyer or of a third person, unless the client consents after full disclosure.

(3) A lawyer may reveal:

- (a) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them;
- (b) confidences or secrets when permitted or required by these rules, or when required by law or by court order;
- (c) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used;
- (d) the intention of a client to commit a crime and the information necessary to prevent the crime; and
- (e) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

(4) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by Subparagraph (F) (3) above through an employee.

(G) Conflict of Interest: General Rule.

(1) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (a) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (b) each client consents after consultation.

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(2) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest unless:

(a) the lawyer reasonably believes the representation will not be adversely affected; and

(b) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(H) Conflict of Interest: Prohibited Transactions.

(1) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

(a) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(b) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(c) the client consents in writing thereto.

(2) A lawyer shall not use information relating to the representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Subparagraph 2.304(F) or 2.306(C).

(3) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donor.

(4) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(5) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(a) a lawyer may advance court costs and expenses of litigation, the repayment of which shall ultimately be the responsibility of the client; and

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- (b) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.
- (6) A lawyer shall not accept compensation for representing a client from one other than the client unless:
- (a) the client consents after consultation;
 - (b) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
 - (c) information relating to representation of a client is protected as required by Subparagraph 2.304(F).
- (7) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or, in a criminal case, an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all claims or pleas involved and of the participation of each person in the settlement.
- (8) A lawyer shall not:
- (a) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement; or
 - (b) settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.
- (9) A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.
- (10) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
- (a) acquire a lien granted by law to secure the lawyer's fee or expenses; and
 - (b) contract with a client for a reasonable contingent fee in a civil case, as permitted by Subparagraph 2.304(E)
- (I) Conflict of Interest: Former Client.

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(1) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

(2) Unless the former client consents after consultation, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated has previously represented a client

(a) whose interests are materially adverse to that person, and

(b) about whom the lawyer had acquired information protected by Subparagraphs 2.304(F) and(I)(3).

(3) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(a) use information relating to the representation to the disadvantage of the former client except as Subparagraphs 2.304(F) or 2.306 (C) would permit or require with respect to a client, or when the information has become generally known; or

(b) reveal information relating to the representation except as Subparagraphs 2.304(F) or 2.306(C) would permit or require with respect to a client.

(J) Imputed Disqualification: General Rule.

(1) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Subparagraphs 2.304 (G), (H)(3), I(1) or (3), or 2.305(B).

(2) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, is disqualified under Subparagraph 2.304(I)(2), unless:

(a) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee there from; and

(b) written notice is promptly given to this Court to enable it to ascertain compliance with the provisions of this rule.

(3) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those

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of a client represented by the formerly associated lawyer, and not currently represented by the firm, unless:

(a) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client, and

(b) any lawyer remaining in the firm has information protected by Subparagraphs 2.304(F) and/or (I)(3) that is material to the matter.

(4) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Subparagraph 2.304(G).

(K) Client Under a Disability.

(1) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority or mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(2) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

(L) Safekeeping Property.

(1) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All funds of the client paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in an interest bearing account in one or more identifiable banks, savings and loan associations, or credit unions maintained in the State in which the law office is situated, and no funds belonging to the lawyer or the law firm shall be deposited therein except as provided in this rule. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(2) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(3) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. If a

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dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(M) Declining or Terminating Representation.

(1) Except as stated in Subparagraph (M) (3) below, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (a) the representation will result in violation of this Code of Ethics or other law;
- (b) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (c) the lawyer is discharged.

(2) Except as stated in Subparagraph (M) (3) below, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

- (a) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (b) the client has used the lawyer's services to perpetrate a crime or fraud;
- (c) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
- (d) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (e) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (f) other good cause for withdrawal exists.

(3) When ordered to do so by this Court, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(4) Upon termination of representation, a lawyer should take reasonable steps to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is

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entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by law.

2.305 Counselor. The following provisions shall apply when a lawyer serves in the role of counselor:

(A) Advisor. In representing a client, a lawyer shall exercise independent professional judgment and shall render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

(B) Intermediary.

(1) A lawyer may act as intermediary between clients if:

(a) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved and the effect on the client-lawyer privileges, and obtains each client's consent to the common representation;

(b) the lawyer reasonably believes that the matter can be resolved on terms compatible with the client's best interests, that each client will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(c) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(2) While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(3) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in Subparagraph (B) (2) above is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

(C) Evaluation for Use by Third Persons.

(1) A lawyer may, for the use of someone other than the client, undertake an evaluation of a matter affecting a client if:

(a) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

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(b) the client consents after consultation.

(2) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is protected by Subparagraph 2.304(F) herein.

2.306 Advocate. The following provisions shall apply when a lawyer serves in the role of advocate:

(A) Meritorious Claims and Contentions. A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous. A lawyer may offer a good-faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may so defend the proceeding as to require that every element of the case be established.

(B) Expediting Litigation. A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

(C) Candor Toward the Tribunal.

(1) A lawyer shall not knowingly:

(a) make a false statement of material fact or law to this Court;

(b) fail to disclose a material fact to this Court when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(c) fail to disclose to this Court controlling legal authority in the jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(d) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(2) The duties stated in subparagraph (C) (1) above continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Subparagraph 2.304(F).

(3) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

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(4) In an ex parte proceeding, a lawyer shall inform this Court of all material facts that are known to the lawyer and that will enable this Court to make an informed decision, whether or not the facts are adverse.

(D) Fairness to Opposing Party and Counsel. A lawyer shall not:

(1) unlawfully obstruct another party's access to evidence; unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value; or counsel or assist another person to do any such act;

(2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(3) knowingly disobey an obligation under the rules of this Court except for an open refusal based on an assertion that no valid obligation exists;

(4) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party;

(5) during trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(6) request a person other than a client to refrain from voluntarily giving relevant information to another party, unless:

(a) the person is a relative or an employee or other agent of a client;
and

(b) the lawyer reasonably believes that the person's interest will not be adversely affected by refraining from giving such information.

(E) Impartiality and Decorum of the Tribunal. A lawyer shall not:

(1) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;

(2) communicate ex parte with such a person concerning a pending matter, except as permitted by law; or

(3) engage in undignified or discourteous conduct toward the tribunal.

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(F) Trial Publicity. A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have substantial likelihood of materially prejudicing an adjudicative proceeding.

(G) Lawyer as Witness.

(1) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

- (a) the testimony relates to an uncontested issue;
- (b) the testimony relates to the nature and value of legal services rendered in the case; or
- (c) disqualification of the lawyer would work substantial hardship on the client.

(2) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Subparagraphs 2.304(G) or (I).

(H) Special Responsibilities of a Prosecutor. The prosecutor in a criminal case shall:

- (1) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (2) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining counsel and has been given reasonable opportunity to obtain counsel as permitted by the Indian Civil Rights Act [25 U.S.C. **Section 1302**];
- (3) not seek to obtain from an unrepresented accused a waiver of important pretrial rights;
- (4) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense, and, in connection with sentencing, disclose to the defense and to this Court all underprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of this Court; and
- (5) exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Subparagraph 2.306(F) or 2.306(I)(1).

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COMMENT: *The responsibility of a Tribal Prosecutor differs from that of the usual advocate as it his or her duty to seek justice, not merely to convict. This special duty exists because:*

- a. The prosecutor represents the sovereignty of the tribe and therefore should use restraint in the discretionary exercises of governmental powers, such as in the selection of cases to prosecute;*
- b. During trial, the prosecutor is not only an advocate but he or she may also make decisions normally made by an individual client and those affecting the public interest should be fair to all; and*
- c. In the tribal system of criminal justice, a person charged is to be given the benefit of all reasonable doubts.*

Consequently, with respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice.

(I) Other Provisions Regarding a Prosecutor. As a result of the special responsibilities of a prosecutor, the following provisions also apply to prosecutors:

(1) Trial Publicity. A tribal prosecutor participating in or associated with the investigation of a criminal matter may not make or participate in making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

- (a) Information contained in a public record;
- (b) That the investigation is in progress;
- (c) The general scope of the investigation including a description of the offense, and if permitted by law, the identity of the victim;
- (d) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary to the request for assistance; or
- (e) A warning to the public of any dangers.

(2) Moral Character and Public Behavior.

- (a) Tribal prosecutors shall strive to attain and maintain moral character which is consistent with their tribal community responsibility.
- (b) Tribal prosecutors will have the responsibility in their daily conduct for acting so as to be as free as possible from actions which wrongfully harm others, which lack true compassion for others, or which are motivated by reasons not in the community interest. This is not meant to encourage tribal prosecutors to be judgmental of the conduct of other members of the community. Rather it is intended to remind them that their responsibility is for their behavior, for it is by their behavior, in Court and in the community, that tribal law enforcement will be judged by the tribal community.

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(c) Tribal prosecutors shall conduct themselves in public consistent with the belief that the Court is part of the community. They will respond to all inquiries concerning the Court in a friendly manner to ensure the development of knowledge in the community about the Court.

(3) Restrictions.

(a) No tribal prosecutor may receive any fee or reward from or on behalf of any victim or other individual for services in any prosecution or business which it is the tribal prosecutor's official duty to attend.

(b) No tribal prosecutor may be concerned as attorney or counsel for either party, other than the Tribe, in any civil action depending upon the same state of facts upon which any prosecution commenced but undetermined depends.

(c) No tribal prosecutor while in office is eligible for or may hold any judicial office.

(d) No person who acted as tribal prosecutor at the time of the citation issuance, arrest, or bringing of charges against any person by the Tribe may thereafter appear for or defend that person against the charges.

(4) Refraining From Criticism. Tribal prosecutors shall refrain from public and private criticism of other officers of the Court except as set out in these rules as being their responsibility. Tribal prosecutors shall not engage in discussions whose sole purpose or main thrust shall be the criticism of any officers of the Court, i.e., judges, lay advocates, attorneys, or law enforcement officers, in public or in private, except that constructive criticism designed to improve the performance of the individual may be given in a kind manner. Said constructive criticism should only be delivered in a forum conducive to the purpose of the constructive criticism.

(5) Independent Decision-Making. Tribal prosecutors have a duty to not be frightened or dissuaded from making difficult or unpopular decisions. Tribal prosecutors have a responsibility to study the applicable law and facts of each case, making prosecutorial decisions based only on these factors. They must not be influenced in making these decisions by the fear of their being unpopular politically or from the threat of community or personal reprisal. They must not be influenced to react by threatening community or family anger. Their decisions should never be reactive to non-admissible influences, rather they should act based on their opinion as formed by the applicable facts and law of each case.

(6) Political Activities.

(a) The political activity of a tribal prosecutor shall be consistent with the support of the community's jurisdictional rights. Tribal prosecutors will refrain from all political activities or actions which could be interpreted in the community as supporting

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any political position except that the tribal community has the right and the responsibility to govern its own members and its own territory. All actions should be consistent with this belief and supportive of this community standard.

(b) This prohibition does not mean that tribal prosecutors cannot, if they choose, engage in activities of electoral politics at the local, state, national or tribal level. This prohibition is specific as to politics adversely affecting the jurisdictional rights of the tribal community.

(7) Avocational and Financial Activities.

(a) Avocational. A tribal prosecutor may write, lecture, teach and speak on any subject, and engage in the arts, sports, and other social and recreational activities of the Tribe, if those activities do not interfere with the performance of his or her duties. A tribal prosecutor may participate on tribal committees and in any tribal educational, religious, charitable or similar organization.

(b) Financial.

(i) A tribal prosecutor shall avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her prosecutorial duties, exploit the prosecutor's position, or involve him or her in frequent transactions with lawyers and others likely to be involved in the opposing side in tribal court cases. The tribal prosecutor may, however, hold other employment or participate in the operation of a business.

(ii) Neither the tribal prosecutor nor any member of his or her family or household shall accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his or her impartiality in prosecutorial duties, or on the prosecutor's appearance of fairness.

(8) Disqualification. A tribal prosecutor shall disqualify himself or herself from acting as prosecutor in any proceeding in which his or her impartiality might reasonably be questioned, including instances where:

(a) The tribal prosecutor has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;

(b) The tribal prosecutor served as lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the tribal prosecutor has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;

(c) The tribal prosecutor knows that he or she individually or a member of his or her family or household, has a financial interest in the subject matter in controversy or

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is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or

- (d) The tribal prosecutor, or a member of his or her family or household:
 - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) is acting as a lawyer or lay advocate in the proceeding; or
 - (iii) is to the tribal prosecutor's knowledge likely to be a material witness in the proceeding.

(J) Advocate in Non-adjudicative Proceedings. A lawyer representing a client before a legislative or administrative tribunal in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Subparagraphs 2.306(C)(1) through (3), 2.306(D)(1) through (3), and 2.306(E).

2.307 Transactions with Persons Other Than Clients. The following provisions shall apply when a lawyer has contact or communicates with persons other than a client:

- (A) Truthfulness in Statements to Others. In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.
- (B) Communication with a Person Represented by a Lawyer. In representing a client, a lawyer shall not communicate about the subject of the representation with a party whom the lawyer knows to be represented in the matter by another lawyer, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
- (C) Dealing with an Unrepresented Person. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.
- (D) Respect for Rights of Third Person. In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

2.308 Law Firms and Associations. The following provisions shall apply to law firms and associations and all law partners or lawyers employed by said firms or associations:

- (A) Responsibilities of a Partner or Supervisory Lawyer.

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(1) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to this Code of Ethics.

(2) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to this Code of Ethics.

(3) A lawyer shall be responsible for another lawyer's violation of the rules contained in this Code if:

(a) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or

(b) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(B) Responsibilities of a Subordinate Lawyer.

(1) A lawyer is bound by this Code of Ethics notwithstanding that the lawyer acted at the direction of another person.

(2) A subordinate lawyer does not violate the rules of this Code if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

(C) Responsibilities Regarding Non-lawyer Assistants. With respect to a non-lawyer employed by, retained by, or associated with a lawyer:

(1) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) a lawyer shall be responsible for conduct of such a person that would be a violation of this Code of Ethics if engaged in by a lawyer if:

(a) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or

(b) the lawyer is a partner in the law firm in which the person is employed or has direct supervisory authority over the person and knows of the

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conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(D) Professional Independence of a Lawyer.

(1) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:

(a) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate, or to one or more specified persons;

(b) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may pay to the estate or other representative of that lawyer the agreed-upon purchase price, and

(c) a lawyer or law firm may include non-lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement

(2) A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.

(3) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(4) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(a) a non-lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(b) a non-lawyer is a corporate director or officer thereof; or

(c) a non-lawyer has the right to direct or control the professional judgment of a lawyer.

(E) Unauthorized Practice of Law. A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

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(2) assist a person which is not a member of a State bar in the performance of activity that constitutes the unauthorized practice of law, except lay advocates or those acting in pro per.

(F) Restrictions on Right to Practice. A lawyer shall not participate in offering or making:

(1) a partnership or employment agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(2) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

2.309 Public Service. The following provisions shall apply to lawyers with regard to public service:

(A) Pro Bono Public Service. A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. A lawyer may also discharge this responsibility by service in activities for improving tribal law, the tribal judicial system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

(B) Accepting Appointments. A lawyer shall not seek to avoid appointment by this Court to represent a person except for good cause, such as:

(1) representing the client is likely to result in violation of this Code of Ethics or other tribal law;

(2) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(3) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

(C) Legal Services Organizations. A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

(D) Law Reform Activities Affecting Client Interest. A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or

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administration of the law notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

2.310 Information About Legal Services. The following provision shall apply with regard to information about legal services:

(A) Communications Concerning a Lawyer's Services.

A lawyer may, on the lawyer's own behalf, on behalf of a partner or associate, or on behalf of any other lawyer affiliated with the lawyer or the lawyer's firm, use or participate in the use of any form of public communication that is not false, fraudulent, misleading, or deceptive. A communication shall not:

- (1) contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading;
- (2) be likely to create an unjustified expectation about results the lawyer can achieve, or state or imply that the lawyer can achieve results by means that violate this Code of Ethics or other tribal law; or
- (3) compare the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated.

(B) Advertising.

- (1) Subject to the provision of this Code, a lawyer may advertise.
- (2) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.
- (3) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or communication permitted by this Code.

(C) Direct Contact with Prospective Clients.

- (1) A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so

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situated that they might in general find such services useful, nor does the term "solicit" include "sending truthful and non-deceptive letters to potential clients known to face particular legal problems" as elucidated in **Shapero v Kentucky Bar Ass'n**, 486 US 466; 108 S Ct 1016; 100 L Ed 2d 475 (1988).

(2) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by Subparagraph (C)(1) above, if:

(a) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(b) the solicitation involves coercion, duress or harassment.

(D) Communication of Fields of Practice. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

2.311 Maintaining the Integrity of the Profession.

(A) Bar Admission and Disciplinary Matters. An applicant for admission to any State or Tribal Bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(1) knowingly make a false statement of material fact, or

(2) fail to disclose a fact necessary to correct a misapprehension known to the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information protected by Subparagraph 2.304(F).

(B) Judicial and Legal Officials.

(1) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge, adjudicative officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(2) A lawyer who is a candidate for judicial office shall comply with the applicable provision of the Code of Tribal Judicial Conduct.

(C) Reporting Professional Misconduct.

(1) A lawyer having knowledge that another lawyer has committed a significant violation of this Code of Ethics that raises a substantial question as to that lawyer's honesty, trustworthiness, or fairness as a lawyer shall inform the Judicial Commission [See, Section 2.400 et seq].

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(2) A lawyer having knowledge that a judge has committed a significant violation of the Code of Tribal Judicial Conduct that raises a substantial question as to the judge's honesty, trustworthiness or fairness for office shall inform the Judicial Commission [See, Section 2.400 et seq].

(3) This rule does not require disclosure of information otherwise protected by Subparagraph 2.304(F).

(D) Misconduct. It is professional misconduct for a lawyer to:

(1) violate or attempt to violate this Code of Ethics, knowingly assist or induce another to do so, or do so through the acts of another;

(2) engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fairness as a lawyer;

(3) engage in conduct that is prejudicial to the administration of justice;

(4) state or imply an ability to influence improperly a government agency or official; or

(5) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Tribal Judicial Conduct or other law.

(E) Jurisdiction A lawyer admitted to practice in this tribal jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere. Also, a lawyer who is admitted to practice in another jurisdiction and who is practicing in this tribal jurisdiction is subject to the disciplinary authority of this jurisdiction.

2.312 Short Title. This Code shall be known and may be cited as the "Code of Ethics for Tribal Lawyers and Lay Advocates."

2.313 Effective Date. This Code becomes effective on July 10, 1998 (per Constitutional Ref.)

As Amended October 9, 2009. (Administrative Order)

Section 2.400 Enforcement of Ethical Codes

2.401 Definitions When used in this Chapter, unless context otherwise indicates:

(A) "Commission" means the Judicial Commission.

(B) "Complainant" means the person who files the request for investigation.

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(C) "Investigation" means fact-finding on alleged misconduct under the Judicial Commission Chairperson's direction.

(D) "Judicial Commission" means the remainder of the Tribal Judges as described in the Tribe's Constitution, Article VI section 5 (b).

(E) "Judicial Commission Chairperson" means the person so appointed pursuant to Section 2.403 (B) hereunder.

(F) "Respondent" means an attorney, lay advocate, judge, or other court personnel named in the request for investigation or complaint.

(G) "Request for Investigation" means the first step in bringing alleged misconduct to the attention of the Judicial Commission.

2.402 Enforcement Responsibility/Procedures/Relationship to Tribal Personnel Policies.

(A) The Judicial Commission shall have the responsibility of enforcing the provisions of this Chapter, including the Code of Judicial Conduct; the Code of Conduct for Tribal Court Clerks, Magistrates, Administrators and other Court Personnel; and the Code of Ethics for Tribal Lawyers and Lay Advocates as set forth in this Chapter. Complaints shall not be received by or acted on by the Tribal Council except as an appeal pursuant to Section 2.407 herein, or as established in Article VI, section 5 (b) of the Tribal Constitution.

(B) When a respondent is an employee of the Tribe, any hearing procedures within the Tribal Personnel Policies or Procedures will apply rather than any hearing procedures set forth within Section 2.400 of this Ethical Code. Similarly, these Codes of Ethics are supplemental to Tribal Personnel Policies where a respondent is a tribal employee and as such, any Tribal Personnel Policies or relevant Tribal Constitutional provisions shall control where there is any inconsistency between these Codes of Ethics and said Tribal Personnel Policies or relevant Tribal Constitutional Provisions.

2.403 Investigation.

(A) Whenever the Judicial Commission shall receive a complaint or information in writing indicating that a provision of Chapter 2 has been violated, the Commission shall conduct an investigation of the circumstances of the alleged violation. Such a request for investigation of alleged misconduct must be in writing; describe the alleged misconduct, including the approximate time and place of it; be signed and dated by the complainant; and be filed with the Judicial Commission.

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(B) Upon the filing of a request for investigation, a member of the Judicial Commission shall be appointed by said Commission to conduct and oversee the investigation and such person shall be known as the Judicial Commission Chairperson.

(C) Prior to commencement of the investigation, the Judicial Commission Chairperson must notify the respondent subject to being investigated and provide respondent with a copy of the written complaint.

(D) The Judicial Commission Chairperson may compel the respondent to answer questions, furnish documents and present any information deemed relevant to the investigation. Failure to do so on the part of the respondent is misconduct and grounds for discipline.

2.404 Review and Action by Committee.

(A) The Judicial Commission Chairperson shall report the result of each investigation to the Judicial Commission and make a recommendation for disposition of the matter.

(B) The Judicial Commission shall review the recommendation and determine whether to dismiss the matter or initiate a disciplinary action.

(C) If a complaint is dismissed, both the complainant and respondent shall be notified.

2.405 Disciplinary Action - Procedure.

(A) If the Judicial Commission determines to proceed with a disciplinary action, said Commission shall prepare a written notice of the allegations and serve the notice upon the respondent.

(B) The respondent shall be given twenty (20) days within which to answer the charges in writing and request a hearing.

(C) The hearing shall be held by the Commission within thirty (30) days of receipt of respondent's request.

(D) The hearing shall be conducted by the Judicial Commission under rules applicable to a trial of a civil action in tribal court. The hearing shall be recorded and shall be open to the public.

(E) The Commission shall, at the conclusion of the hearing, determine on the evidence presented whether any provision of Chapter 2 has been violated by respondent.

2.406 Disciplinary Action - Disposition. If the Judicial Commission finds that a provision of Chapter 2 has been violated by respondent, it shall make one of the following dispositions, taking into account the severity of the offense and other factors the Judicial Commission deems relevant:

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- (A) Issue a reprimand;
- (B) Suspend the respondent from his or her office or duties for a period of time;
- (C) Revoke respondent's license or certificate to practice before this Court or terminate respondent from his or her office; exception, see Article VI, section 5 (b) of the Tribal Constitution.
- (D) Place respondent on probation for a specific period of time;
- (E) Require respondent to make restitution in an appropriate amount (where applicable); or
- (F) Admonishment of respondent, only by consent of said respondent. Further, the Commission shall have the discretion to impose other disposition not referenced above where the respondent is incompetent or incapacitated.

2.407 Confidentiality.

- (A) All papers, files and communications in an investigation and proceedings before the Judicial Commission prior to the decision to proceed with a disciplinary action are confidential.
- (B) After service of a written notice on respondent under Section 2.405 (A), the proceedings and all papers filed are public.

2.409 Short Title. This Code shall be known and may be cited as the "Code of Enforcement of Ethical Conduct."

2.410 Effective Date. This Code becomes effective on July 10, 1998 (per Constitutional Ref.)

As Amended July 16, 2009 (Administrative Order)

As Amended October 9, 2009 (Administrative Order)