

TRIBAL CODE  
CHAPTER 83:  
CODE OF ETHICS  
FOR THE LAC DU FLAMBEAU TRIBAL COURT PERSONNEL

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TRIBAL CODE

CHAPTER 83:

CODE OF ETHICS  
FOR THE LAC DU FLAMBEAU TRIBAL COURT PERSONNEL

CHAPTER I: TRIBAL COURT JUDGES

83.101 Who is Bound by This Code.

(1) This Code applies to anyone, whether or not a lawyer, who has been appointed as a tribal judge pursuant to the Tribal court Code, Tribal Code Ch. 80, whether for a three year term or pro tempore for a specific case or appeal.

(2) It is contemplated that the trial court judges will be part-time judges who shall be permitted to devote time to some other profession or occupation. A part-time judge:

(a) Is required to comply with this code unless otherwise exempted;

(b) Should not practice law either as a lawyer or an advocate:

(i) in a tribal court on which he or she serves;

(ii) in any court subject to the appellate jurisdiction of the tribal court or council on which he or she serves;

(c) Should not act as a lawyer or advocate in a proceeding in which he or she has served or in any related proceeding.

(3) A judge pro tempore is a person who is appointed to act temporarily as a judge. A temporary judge:

(a) Is required to comply with this code unless otherwise exempted.

(b) Should not appear as a lawyer or advocate in a proceeding in which he or she has served as a judge or in any related proceedings.

(4) If the Tribe shall at a later time create full-time judicial positions, the contents of this code shall be reconsidered to take into account that fact.

83.102 Honesty and Independence of Indian Judiciary.

(1) An Indian court judge should uphold the integrity and independence of the Indian judiciary.

(2) An independent and honorable Indian judiciary is essential to justice in the tribal community. An Indian court judge should help create and maintain such a judiciary, and should observe high standards of conduct toward achieving this goal.

(3) A judge should encourage a separation between the judicial branch and other branches of tribal government, and should avoid any contact or duty that violates such a separation.

(4) A judge shall not be a candidate for or serve on the Tribal Council.

(5) A judge may accept appointment as a tribal representative to intertribal or intergovernmental groups, such as the Great Lakes Intertribal Council or the Voigt Intertribal Task Force, but shall not hear cases which involve matters directly related to the duties performed with such a group.

#### 83.103 Impropriety and the Appearance of Impropriety.

(1) An Indian court judge should avoid impropriety and the appearance of impropriety in all his/her activities.

(2) An Indian court judge should respect and comply with the law and tradition of the Tribe and should at all times act in a manner that promotes public confidence in the honesty and impartiality of the Indian judiciary.

(3) A judge should not allow family, social or other personal relationships to influence his/her judicial conduct. He/she should not attempt to use the prestige of his/her office to advance the private interests of others; nor should he/she convey the impression that anyone has special influence on the judge.

#### 83.104 Diligence and Impartiality.

(1) An Indian 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 prescribed by tribal law, custom or tradition. In the performance of these duties, the following standards shall apply:

(a) An Indian court judge should adhere to the laws, customs and traditions of the Tribe. He/she should be unswayed by partisan interests, public clamor, political pressure, or fear of criticism, and should resist influences on the court by other tribal officials, governmental officials or any others attempting to improperly influence the court.

(b) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, advocates and others with whom he/she 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.

(c) A tribal judge should give to every person who is legally interested in a proceeding, or his/her representative, a full right to be heard according to tribal law and tradition. A judge should avoid all out-of-court or other communications with tribal officials, agents, or others concerning a pending proceeding unless all parties to the proceeding are present and represented. A judge may, however, obtain the advice of a disinterested expert on federal law, or on tribal law, custom or tradition, or on some other sources of law applicable to a proceeding before the court such as the tribal attorney, if the request for advice is limited to points of law or tradition and does not involve the particular merits of the case. Ordinarily the parties should be given a reasonable opportunity to respond to the information provided by the expert.

(d) An Indian court judge should maintain order in the court. He/she should not interfere in the proceedings except where necessary to protect the rights of the parties. An Indian court judge should not rely on only those procedures prescribed by the laws and customs of the Tribe.

(e) An Indian court judge should dispose promptly of the business of the court.

(f) An Indian court judge should not comment publicly on any proceeding pending in court and should also prohibit other court personnel from making such public comment.

(2) Administrative responsibilities:

(a) A judge should diligently perform his/her administrative responsibilities with a high degree of honesty and diligence.

(b) A judge should require his/her staff and court officials to observe high standards of honesty and diligence.

(c) A judge should initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(3) Disqualifications. An Indian court 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 or disputed evidentiary facts;

(b) The judge served as a lawyer, advocate, or personal representative in the matter before the court, or a person with whom the judge has been associated in a professional capacity

served as a lawyer, advocate or personal representative concerning the matter;

(c) The judge knows that he/she individually (or any member of the judge's family residing in his/her 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;

(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:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer or advocate in the proceeding;

(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 tribal judge's knowledge likely to be a material witness in the proceeding.

(4) Alternative to disqualification. A judge disqualified by terms of sub. (3)(c) or (d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's participation is not prejudicial or that his financial interest is insubstantial, the judge is not longer disqualified, and may participate in the proceeding.

#### 83.105 Improvement of the Legal System.

An Indian court judge may engage in activities to improve the law, the legal system and the administration of justice. A judge may engage in the following activities, if in so doing he/she does not cast doubt on his/her capacity to decide impartially any issue that may come before the court:

(1) The judge may speak, write, lecture, teach and participate in other activities concerning tribal law and custom, the legal system of the Tribe and the administration of justice.

(2) 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

tribal judge and shall make it clear that he/she is not speaking in his/her capacity as tribal judge.

(3) 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. He/she 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.

(4) A judge may accept appointment as a tribal representative to intertribal or intergovernmental groups, such as the Great Lakes Intertribal Council or the Voigt Intertribal Task Force.

(5) A tribal judge shall not serve as a member, officer, or director of any tribal governmental entity except as provided in sub. (3) and (4). This includes tribal boards and committees such as the Housing Authority, Health Board, Water and Sewer Board, and the like.

#### 83.106 Extra-Judicial Activities.

(1) A tribal judge should regulate his/her extra-judicial activities to minimize the risk of conflict with judicial duties.

(2) A tribal judge may write, lecture, teach and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities of the Tribe, if these activities do not interfere with the performance of his/her duties.

(3) A tribal judge may participate in civic, charitable, and other tribal activities that do not reflect upon his/her impartiality or interfere with the performance of his/her judicial duties. A tribal judge may participate in any tribal educational, religious, charitable, or similar organization; provided, a tribal judge should not participate if it is likely that the organization will be involved in proceedings which would ordinarily come before him/her or will be involved in adversary proceedings in any tribal court.

#### (4) Financial activities.

(a) A tribal judge should avoid financial and business dealings that tend to reflect adversely on his/her impartiality, interfere with the performance of 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 he/she serves.

(b) Because it is recognized that the position of tribal judge is a part-time position, a tribal judge may accept other employment and participate in the operation of a business.

(c) neither a judge nor a member of his/her family residing in the household should accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his/her impartiality in judicial proceedings, or on the judge's appearance of fairness.

(5) In addition to the tribal representation authorized by sec. 83.105(3) and (4), a tribal court judge may represent the Tribe on ceremonial occasions or in connection with historical, educational and cultural activities.

#### 83.107 Political Activities of Indian Court Judges.

(1) An Indian court judge should refrain from political activity inappropriate to his/her judicial office.

(2) A tribal judge shall not be a candidate for or serve on the Tribal Council, nor shall a tribal judge be actively involved in the campaign of another for Tribal Council.

(3) Judges will refrain from all political activities or actions which could be interpreted in the judge's 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 judges cannot, if they choose, 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 community.

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

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

(b) 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.

## CHAPTER II: COURT CLERKS

#### 83.201 Upholding the Integrity and Independence of the Judiciary.

An independent and honorable judiciary is indispensable to justice in any society. A clerk should observe, and impart to the court staff, high standards of conduct so that the integrity and independence of the judiciary may be preserved and the clerk's office may reflect a devotion to serving the public. The provisions of this chapter should

be construed and applied to further that objective. The standards of this chapter shall not affect or preclude other standards which may be promulgated by order of the court.

### 83.202 Avoiding Impropriety and the Appearance of Impropriety.

(1) A clerk should not engage in any activities which would put into question the propriety of conduct in carrying out the duties of the office. A clerk should not allow family, social, or other relationships to influence official conduct or judgment. The clerk should not lend the prestige of the clerk's office to advance the private interests of others, nor should the clerk convey or others be permitted to convey the impression that they are in a special position to influence the clerk.

(2) Neither a clerk nor a family member residing in the household should accept a gift, bequest, favor, or loan from any person whose interests have come or are likely to come before the clerk, or from any other person under circumstances which might reasonably be regarded as influencing the performance of the duties of the office.

(3) A clerk should abstain from public comment about a pending or impending proceeding in court, and should require similar abstention on the part of court staff. The clerk 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.

(4) A clerk should avoid favoritism, unfairness, or nepotism in connection with the hiring, discharge, or treatment of subordinate staff.

(5) A clerk should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a manner which improperly favors any litigant or attorney, nor imply that a court clerk is in a position to do so.

(6) A clerk should not practice law.

### 83.203 Diligent and Impartial Performance of Duties.

The official duties of a clerk take precedence over all activities. The official duties include all the duties of the clerk's office prescribed by the law or by order of the court. In the performance of these duties, the following standards apply:

(1) A clerk 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 judiciary and the clerk's office.

(2) A clerk should be faithful to the highest standards of the profession and maintain professional competence in it. A clerk should be patient, dignified, courteous, and fair to all persons dealt with in an official capacity, and should require similar conduct from subordinate staff and others subject to direction and control of the

clerk. The clerk should bear in mind obligations to the general public as well as to the legal profession. The clerk should treat fairly and courteously lay persons who desire to file suits pro se or to examine the court's public records.

#### 83.204 Activities to Improve the Legal System.

A clerk, subject to the proper performance of official duties, may engage in the following quasi-official activities:

(1) The clerk may speak, write, lecture, teach and participate in other activities concerning court management, the legal system, and the administration of justice.

(2) The clerk may promote the development of professional organizations and foster the interchange of technical information and experience with others in the profession. The clerk 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 court system.

#### 83.205 Extra-Official Activities.

(1) A clerk 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, if such avocational activities do not detract from the dignity of the office, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court.

(2) A clerk 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. A clerk 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:

(a) The clerk should not use or permit the use of the prestige of the clerk's office in the solicitation of funds.

(b) The clerk 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.

(c) The clerk should not solicit funds from lawyers or persons likely to come before the clerk's office or the court served.

(3) Without the express permission of the court, a clerk may not carry on financial and business dealings, including 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 official position, or be

involved in frequent transactions with lawyers or persons likely to come before the clerk's office of the court served.

83.206 Quasi-Official Compensation.

It is recognized that the clerk may from time to time receive compensation for certain quasi-official activities, such as the preparation of a transcript for a private party. Compensation should not exceed a reasonable amount, nor should it exceed that normally received by others for the same activity. A clerk must keep records of such compensation as may be required by tribal law or court rule.

CHAPTER III: PERSONS PRACTICING BEFORE TRIBAL COURT

83/301 Preliminary Statement.

(1) The American Bar Association has promulgated a Code of Professional Responsibility governing the conduct of lawyers, and this has been adopted by the Wisconsin Supreme Court to govern attorneys practicing in Wisconsin. The Tribe wishes to adopt the disciplinary rules contained in the Code of Professional Responsibility to apply insofar as practicable to the practice of law before the tribal court.

(2) 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 disciplinary rules.

(3) In assessing whether a disciplinary rule has been violated, resort may be had to the ethical considerations published as a part of the Code of Professional Responsibility and ethics opinions of the American Bar Association and the Wisconsin Bar Association.

83.302 Applicability.

(1) The provisions of this code apply to all persons, whether attorney or lay advocate, admitted to practice before the tribal court.

(2) It is recognized that attorneys who are admitted to practice before the tribal court are also members of the State Bar of Wisconsin and subject to discipline under state ethics rules. This code is not intended to preempt or supersede any state authority to discipline attorneys for conduct prohibited by this code.

83.303 Definitions.

(1) "Confidence" means information protected by the attorney-client privilege under applicable law.

(2) "Differing interests" include every interest that will adversely affect either the judgement or the loyalty of a lawyer to a client, whether it is a conflicting, inconsistent, diverse or other interest.

(3) "Lawyer" includes a lay advocate admitted to practice before tribal court.

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

(5) "Secret" means information, other than a confidence, 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.

(6) "Tribal Court" means the Lac Du Flambeau Tribal Court.

83/304 Misconduct.

A lawyer shall not:

(1) Violate a disciplinary rule or the attorneys oath.

(2) Circumvent a disciplinary rule through actions of another.

(3) Engage in illegal conduct or conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

83.305 Disclosure of Information to Authorities.

(1) A lawyer possessing unprivileged knowledge of a violation of sec. 83.304 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(2) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

83.306 Maintaining Integrity and Competence of The Legal Profession.

(1) A lawyer is subject to discipline if the lawyer makes a materially false statement in, or deliberately fails to disclose a material fact requested in connection with his or her application for admission to the bar.

(2) A lawyer shall not further the application for admission to the bar of another person who the lawyer knows to be unqualified in respect to character, education or other relevant attribute.

83.307 Recommendation of Professional Employment.

(1) A lawyer may not recommend employment, as a private practitioner, of herself or himself, a partner or associate to a nonlawyer who has sought his or her advice regarding employment of a lawyer.

(2) Except as permitted under sub. (3), a lawyer may not compensate or give anything of value to a person or organization to recommend or secure his or her employment by a client or as a reward for having made a recommendation resulting in his or her employment by a client.

(3) A lawyer may not request a person or organization to recommend employment, as a private practitioner, of herself or himself, his or her partner or associate except that the lawyer may request referrals from a lawyer referral service operated, sponsored or approved by a bar association representative of the general bar of the geographical area in which the association exists and may pay its fees incident to referrals from the service.

(4) A lawyer may not knowingly assist a person or organization that recommends, furnishes or pays for legal services to promote the use of his or her services or those of his or her partners or associates except a lawyer may cooperate in a dignified manner with the legal service activities of any of the following, if his or independent professional judgment is exercised in behalf of the client without interference or control by any organization or other person:

(a) A legal aid office or public defender office:

(i) Operated or sponsored by a duly accredited law school.

(ii) Operated or sponsored by a bona fide nonprofit community organization.

(iii) Operated or sponsored by a government agency.

(iv) Operated, sponsored or approved by a bar association representative of the general bar of the geographical area in which the association exists.

(b) A military legal assistance office.

(c) A lawyer referral service operated, sponsored or approved by a bar association representative of the general bar of the geographical area in which the association exists.

(d) A bar association representative of the general bar of the geographical area in which the association exists.

(e) Any other nonprofit organization that recommends, furnishes or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of the legal service activities and only if the following conditions, unless prohibited by that interpretation, are met:

(i) The primary purposes of the organization do not include the rendition of legal services.

(ii) The recommending, furnishing or paying for legal services to its members is incidental and reasonably related to the primary purposes of the organization.

(iii) The organization does not derive a financial benefit from the rendition of legal services by the lawyer.

(iv) The member or beneficiary for whom the legal services are rendered and not the organization, is recognized as the client of the lawyer in that matter.

(v) A lawyer may not accept employment when the lawyer knows or it is obvious that the person who seeks services does so as a result of conduct prohibited under this rule.

#### 83.308 Suggestion of Need of Legal Services.

A lawyer who has given unsolicited advice to a layman that he or she should obtain counsel or take legal action may not accept employment resulting from that advice, except that:

(1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment) or one whom the lawyer reasonably believes to be a client.

(2) A lawyer may accept employment that results from his or her participation in activities designed to educate laymen to recognize legal problems, to make intelligent selection of counsel or to utilize available legal services if the activities are conducted or sponsored by any of the offices or organizations enumerated in sec. 83.307(4) (a) to (e), to the extent and under the conditions prescribed in those rules.

(3) A lawyer who is furnished or paid by any of the offices or organizations enumerated in sec. 83.307(4) (a), (b) or (e) may represent

a member or beneficiary of the office or organization to the extent and under the conditions prescribed in these sections.

(4) A lawyer may speak publicly or write for publication on legal topics without affecting his or her right to accept employment if the lawyer does not emphasize his or her own professional experience or reputation and does not undertake to give individual advice.

(5) If success in asserting rights or defenses of his or her client in litigation in the nature of a class action is dependent upon the joinder of others, a lawyer may accept, but may not seek, employment from those contacted for the purpose of obtaining their joinder.

### 83.309 Fees For Legal Services.

(1) A lawyer may not enter into an agreement for charge or collect an illegal or clearly excessive fee.

(2) 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. Factors to be considered 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.

(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.

(h) Whether the fee is fixed or contingent.

(3) A lawyer may not enter into an agreement for charge or collect a contingent fee for representing a defendant in a criminal case.

83.310 Division of Fees Among Lawyers.

A lawyer may not divide a fee for legal services with another lawyer who is not a partner in or associate of his or her law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(4) This rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

83.311 Agreements Restricting The Practice of a Lawyer.

(1) A lawyer may not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(2) In connection with the settlement of a controversy or suit, a lawyer may not enter into an agreement that restricts his or her right to practice law.

83.312 Acceptance of Employment.

A lawyer shall not accept employment on behalf of a person if the lawyer knows or it is obvious that the person wishes to:

(1) Bring a legal action, conduct a defense or assert a position in litigation or otherwise have steps taken, merely for the purpose of harassing or maliciously injuring any person.

(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification or reversal of existing law.

83.313 Withdrawal From Employment.

(1) In General.

(a) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer may not withdraw from employment in a proceeding before that tribunal without its permission.

(b) In any event, a lawyer may not withdraw from employment until he or she has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to his or her client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled and complying with applicable laws and rules.

(c) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(2) Mandatory Withdrawal. A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment and a lawyer representing a client in other matters shall withdraw from employment, if:

(a) The lawyer knows or it is obvious that the client is bringing the legal action, conducting the defense or asserting a position in the litigation or is otherwise having steps taken, merely for the purpose of harassing or maliciously injuring any person.

(b) The lawyer knows or it is obvious that his or her continued employment will result in violation of a disciplinary rule.

(c) The lawyer's mental or physical condition renders it unreasonably difficult for the lawyer to carry out the employment effectively.

(d) The lawyer is discharged by his client.

(3) Permissive Withdrawal. If sub. (2) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal and may not withdraw in other matters, unless such request or withdrawal is because:

(a) The lawyer's client:

(i) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension modification or reversal of existing law.

(ii) Personally seeks to pursue an illegal course of conduct.

(iii) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the disciplinary rules.

(iv) By other conduct renders it unreasonably difficult for the lawyer to carry out his or her employment effectively.

(v) Insists, in matter not pending before a tribunal, that the lawyers engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the disciplinary rules.

(vi) Deliberately disregards an agreement or obligation to the lawyer as to expense or fees.

(b) The lawyer's continued employment is likely to result in a violation of a disciplinary rule.

(c) The client's inability to work with counsel indicates that the best interests of the client likely will be served by withdrawal.

(d) The lawyer's mental or physical condition renders it difficult for the lawyer to carry out the employment effectively.

(e) The lawyer's client knowingly and freely assents to termination of his employment.

#### 83.314 Aiding unauthorized practice of law.

(1) A lawyer may not aid a nonlawyer in the unauthorized practice of law.

(2) A lawyer may not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

#### 83.315 Dividing legal fees with a nonlawyer.

A lawyer or law firm may not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with his or her firm, partner or associate may provide for the payment of money, over a reasonable period of time after death, to his or her estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

83.316 Forming a Partnership With a Nonlawyer.

A lawyer may not form a partnership with a nonlawyer if any of the activities of the partnership consists of the practice of law.

83.317 Preservation of Confidences and Secrets of a Client.

(1) Except when permitted under sub. (2), a lawyer may not knowingly:

(a) Reveal a confidence or secret of his or her client.

(b) Use a confidence or secret of his or her client to the disadvantage of the client.

(c) Use a confidence or secret of his or her client, for his or her advantage or advantage of a third person, unless the client consents after full disclosure.

(2) A lawyer may reveal:

(a) Confidences or secrets with the consent of the client or clients affected but only after a full disclosure to them.

(b) Confidences or secrets when permitted under disciplinary rules or required by law or court order.

(c) The intention of a client to commit a crime and the information necessary to prevent the crime.

83.318 Refusing Employment When the Interests of the Lawyer may Impair His or Her Independent Professional Judgment.

(1) Except with the consent of the client after full disclosure, a lawyer may not accept employment if the exercise of his or her professional judgment on behalf of the client will be or reasonably may be affected by his or her own financial, business, property or personal interests.

(2) A lawyer may not accept employment in contemplated or pending litigation if he or she knows or it is obvious that he or she or a lawyer in his or her firm ought to be called as a witness, except that the lawyer may undertake the employment and the lawyer or a lawyer in the firm may testify:

(a) If the testimony will relate solely to an uncontested matter.

(b) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(c) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or the firm to the client.

(d) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or the firm as counsel in the particular case.

83.319 Withdrawal as Counsel When the Lawyer Becomes a Witness.

(1) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or she or a lawyer in his or her firm ought to be called as a witness on behalf of his or her client, the lawyer shall withdraw from the conduct of the trial and the firm, if any, may not continue representation in the trial, except that the lawyer may continue the representation and the lawyer or a lawyer in the firm may testify in the circumstances enumerated in 83.318(2).

(2) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a lawyer in the firm may be called as a witness other than on behalf of the client, the lawyer may continue the representation until it is apparent that his or her testimony is or may be prejudicial to the client.

83.320 Avoiding Acquisition of Interest in Litigation.

(1) A lawyer may not acquire a proprietary interest in the cause of action or subject matter of litigation he or she 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.

(b) Contract with a client for a reasonable contingent fee in a civil case.

(2) While representing a client in connection with contemplated or pending litigation, a lawyer may not advance or guarantee financial assistance to the client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination and costs of obtaining and presenting evidence, provided the client remains ultimately liable for those expenses.

83.321 Limiting Business Relations With a Client.

(1) A lawyer may not enter into a business transaction with a client if they have differing interests in that transaction and if the client expects the lawyer to exercise his or her professional judgment in the transaction for the protection of the client, unless the client has consented after full disclosure.

(2) Prior to conclusion of all aspects of the matter giving rise to a lawyer's employment, a lawyer may not enter into any arrangement or understanding with a client or a prospective client by which the lawyer acquires an interest in publication rights with respect to the subject matter of the lawyer's employment or proposed employment.

83.322 Refusing To Accept or Continue Employment if The Interests of Another Client May Impair The Independent Professional Judgment of The Lawyer.

(1) A lawyer shall decline proffered employment if the exercise of the lawyer's independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under sub. (3).

(2) A lawyer may not continue multiple employment if the exercise of the lawyer's independent professional judgment in behalf of a client will be or is likely to be adversely affected by the lawyer's representation of another client, except to the extent permitted under sub. (3).

(3) In the situation covered by subs. (1) and (2), a lawyer may represent multiple clients if it is obvious that the lawyer can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of the lawyer's independent professional judgment on behalf of each.

(4) If a lawyer is required to decline employment or withdraw from employment under this rule, no partner or associate of the lawyer or his or her firm may accept or continue that employment.

83.323 Settling Similar Claims of Clients.

A lawyer who represents 2 or more clients may not make or participate in the making of an aggregate settlement of the claims of or against the clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement and of the participation of each person in the settlement.

83.324 Avoiding Influence By Others Than The Client.

(1) Except with the consent of the lawyer's client after full disclosure, a lawyer may not:

(a) Accept compensation for legal services from one other than the client.

(b) Accept from one other than the client anything of value related to the lawyer's representation of or the lawyer's employment by the client.

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

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

(a) A nonlawyer owns any interest in the practice, professional corporation or association, except that a fiduciary representative of the estate of a lawyer may hold the stock of interest of the lawyer for a reasonable time during administration;

(b) A nonlawyer is a corporate director or officer; or

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

(4) A lawyer who is regularly employed shall not accept professional employment if the professional employment will conflict with the interests of or the lawyer's loyalty to the lawyer's employer except in compliance with 83.317(1) and with the prior consent of the employer.

83.325 Failing to Act Competently.

A lawyer may not:

(1) Handle a legal matter which the lawyer knows or should know that he or she 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.

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

83.326 Limiting Liability to Client.

A lawyer shall not attempt to exonerate himself or herself from or limit his or her liability to a client for malpractice.

83.327 Representing a Client Zealously.

(1) A lawyer may not intentionally:

(a) Fail to seek the lawful objectives of the lawyer's client through reasonably available means permitted by law and the disciplinary rules, except as provided by sub. (2). A lawyer does not violate this rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the

lawyer's 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.

(b) Fail to carry out a contract or employment entered into with a client for professional services, but the lawyer may withdraw as permitted under secs. 83.313, 83.319 and 83.322.

(c) Prejudice or damage the client during the course of the professional relationship, except as required under sub. (2).

(2) In his or her representation of a client, a lawyer may:

(a) Where permissible, exercise his or her professional judgment to waive or fail to assert a right or position of the client.

(b) Refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

83.328 Representing a Client Within the Bounds of the Law.

(1) In his or her representation of a client, a lawyer may not:

(a) File a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(b) knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law.

(c) conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.

(d) Knowingly use perjured testimony or false evidence.

(e) Knowingly make a false statement of law or fact.

(f) Participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false.

(g) Counsel or assist the client in conduct that the lawyer knows to be illegal or fraudulent.

(h) Knowingly engage in other illegal conduct or conduct contrary to a disciplinary rule.

(2) A lawyer who receives information clearly establishing that the lawyer's client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal.

83.329 Communicating With One of Adverse Interest.

During the course of representing a client a lawyer may not:

(1) Communicate or cause another to communicate on the subject of the representation with a party the lawyer knows to be represented by a lawyer in that matter unless the lawyer has the prior consent of the lawyer representing the other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of the person are or have a reasonable possibility of being in conflict with the interests of the client.

83.330 Threatening Criminal Prosecution.

A lawyer may not present, participate in presenting or threaten to present criminal charges solely to obtain an advantage in a civil matter.

83.331 Trial Conduct.

(1) A lawyer may not disregard or advise a client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take appropriate steps in good faith to test the validity of the rule or ruling.

(2) In presenting a matter to a tribunal, a lawyer shall disclose:

(a) Legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of his or her client and which is not disclosed by opposing counsel.

(b) Unless privileged or irrelevant, the identities of the clients the lawyer represents and of the persons who employed the lawyer.

(3) In appearing in his or her professional capacity before a tribunal, a lawyer may not:

(a) State or allude to any matter that the lawyer has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(b) Ask any question that the lawyer has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(c) Assert his or her personal knowledge of the facts in issue, except when testifying as a witness.

(d) Assert his or her personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; except the lawyer may argue, on his or her analysis of the evidence, for any position or conclusion with respect to those matters.

(e) Fail to comply with known local customs of courtesy or practice of the bar or particular tribunal without giving to opposing counsel timely notice of the lawyer's intent not to comply.

(f) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(g) Intentionally or habitually violate any established rule of procedure or of evidence.

#### 83.332 Trial Publicity.

(1) A lawyer or law firm associated with the prosecution or defense of a criminal matter may not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(a) The character, reputation or prior criminal record (including arrests, indictments or other charges of crime) of the accused.

(b) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(c) The existence or contents of any confession, admission or statement given by the accused or the accused's refusal or failure to make a statement.

(d) The performance or results of any examinations or tests or the refusal or failure to make a statement.

(e) The identity, testimony or credibility of a prospective witness.

(f) Any opinion as to the guilt or innocence of the accused, the evidence or the merits of the case.

(2) Subsection (1) does not preclude a lawyer during the delineated period from announcing:

(a) The name, age, residence, occupation and family status of the accused.

(b) If the accused has not been apprehended, any information necessary to aid in the apprehension of the accused or to warn the public of any dangers the accused may present.

(c) A request for assistance in obtaining evidence.

(d) The identity of the victim of the crime.

(e) The fact, time and place of arrest, resistance, pursuit and use of weapons.

(f) The identity of investigating and arresting officers or agencies and the length of the investigation.

(g) At the time of seizure, a description of the physical evidence seized, other than a confession, admission or statement.

(h) The nature, substance or text of the charge. Quotation from or references to public records of the court in the case.

(i) The scheduling or result of any step in the judicial proceedings.

(j) That the accused denies the charges made against him or her.

(3) During the selection of a jury trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter may not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.

(4) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense may not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(5) Subsections (1) to (4) also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to those proceedings.

(6) A lawyer or law firm associated with a civil action may not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to

public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(a) Evidence regarding the occurrence or transaction involved.

(b) The character, credibility or criminal record of a party, witness or prospective witness.

(c) The performance or results of any examinations or tests or the refusal or failure of a party to submit to examination or test.

(d) The lawyer or law firm's opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(e) Any other matter reasonably likely to interfere with a fair trial of the action.

(7) During the pendency of an administrative proceeding, a lawyer or law firm associated with the proceeding may not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(a) Evidence regarding the occurrence or transaction involved.

(b) The character, credibility or criminal record of a party, witness or prospective witness.

(c) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to an examination or test.

(d) The lawyer or law firm's opinion as to the merits of the claims, defenses or positions of an interested person.

(e) Any other matter reasonably likely to interfere with a fair hearing.

(8) Subsections (1) to (7) do not preclude a lawyer from replying to charges of misconduct publicly made against the lawyer or from participating in the proceedings of legislative, administrative or other investigative bodies.

(9) A lawyer shall exercise reasonable care to prevent his or her employees and associates from making an extrajudicial statement that the lawyer would be prohibited from making under this rule.

### 83.333 Communication With or Investigation of Jurors.

(1) Before the trial of a case a lawyer connected with the case may not communicate with or cause another to communicate with anyone

the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

(2) During the trial of a case :

(a) A lawyer connected with the case may not communicate with any member of the jury.

(b) A lawyer who is not connected with the case may not communicate with or cause another to communicate with any juror concerning the case.

(3) Subsections (1) and (2) do not prohibit a lawyer from communicating with a juror or jurors in the course of official proceedings.

(4) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer may not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

(5) A lawyer may not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a juror or a juror.

(6) All restrictions imposed by this section upon a lawyer also apply to communications with or investigations of members of a family of a juror or a juror.

(7) A lawyer shall reveal promptly to the court improper conduct by a juror or a juror, or by another toward a juror or a juror or a member of the juror's family, of which the lawyer has knowledge.

#### 83.334 Contact With Witnesses.

(1) A lawyer may not suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or produce.

(2) A lawyer may not advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness before that tribunal.

(3) A lawyer may not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his or her testimony or the outcome of the case. But a lawyer may advance, guarantee or acquiesce in the payment of:

(a) Expenses reasonably incurred by a witness in attending or testifying.

(b) Reasonable compensation to a witness for his or her loss of time in attending or testifying.

(c) A reasonable fee for the professional services of an expert witness.

83.335 Contact With Officials.

(1) A lawyer may not give or lend anything of value to a judge, official or employee of a tribunal.

(2) In an adversary proceeding, a lawyer may not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(a) In the course of official proceedings in the cause.

(b) In writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if the party is not represented by a lawyer.

(c) Orally upon adequate notice to opposing counsel or to the adverse party if the party is not represented by a lawyer.

(d) As otherwise authorized by law.

83.336 Action as a Public Official.

A lawyer who holds public office may not:

(1) Use the public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or herself or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest.

(2) Use the public position to influence, or attempt to influence, a tribunal to act in favor of himself or herself or of a client.

(3) Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

83.337 Statements Concerning Adjudicatory Officers.

A lawyer may not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

83.338 Avoiding Even the Appearance of Impropriety.

(1) A lawyer may not accept private employment in a matter upon the merits of which the lawyer has acted in a judicial capacity.

(2) A lawyer may not accept private employment in a matter in which the lawyer had substantial responsibility while he or she was a public employee.

(3) A lawyer may not state or imply that he or she is able to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official.

83.339 Preserving Identity of Funds and Property of a Client.

~~(1) All funds of clients paid to a lawyer or law firm,~~ other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm may be deposited in such an account except as follows:

(a) Funds reasonably sufficient to pay bank charges may be deposited in the account.

(b) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited in the account, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion may not be withdrawn until the dispute is finally resolved.

(2) A lawyer shall:

(a) Promptly notify a client of the receipt of the client's funds, securities or other properties.

(b) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(c) Maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them.

(d) Promptly pay or deliver to the client as requested by a client the funds, securities or other properties in the possession of the lawyer which the client is entitled to receive.

CHAPTER IV: TRIBAL PROSECUTORS

83.401 Relation to Other Chapters.

Chapter III shall apply to tribal prosecutors. The provisions of this chapter are in addition to the provisions applicable to all persons who practice before the tribal court, recognizing the unique importance of the tribal prosecutors in the tribal justice system.

#### 83.402 Prosecutor's Responsibility.

The responsibility of a tribal prosecutor differs from that of the usual advocate; his or her duty is to seek justice, not merely to convict. This special duty exists because:

(1) 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.

(2) 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.

(3) In the tribal system of criminal justice a person charged is to be given the benefit of all reasonable doubts.

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

#### 83.403 Performing the Duty of Tribal Prosecutor.

(1) A tribal prosecutor shall not institute or cause to be instituted criminal charges when the prosecutor knows or it is obvious that the charges are not supported by probable cause.

(2) A tribal prosecutor in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if the defendant has no counsel, of the existence of evidence, known to the prosecutor, that tends to negate the guilt of the accused, mitigate the degree of the offense or reduce the punishment.

#### 83.404 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:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and if permitted by law the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary to the request for assistance.

(5) A warning to the public of any dangers.

83.405 Restrictions on Tribal Prosecutors.

(1) 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.

(2) 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.

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

(4) 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.

83.406 Moral Character.

(1) Tribal prosecutors shall strive to attain and maintain moral character which is consistent with their community responsibility.

(2) 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 community.

83.407 Refraining From Criticism.

Tribal prosecutors shall refrain from public and private criticism of other officers of the court except as set out in this section as 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, 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.

83.408 Public Behavior.

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.

The tribal prosecutors will be supportive of the court and its role in the community in all of their interaction with community members. They will make themselves available in the community to respond to questions regarding the court's operation.

83.409 Political Activity.

(1) The political activity of the tribal prosecutors 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 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.

(2) 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 community.

83.410 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.

83.411 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:

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

(2) 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.

(3) 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 is a party to the proceeding, or

has any other interest that could be substantially affected by the proceedings.

(4) The tribal prosecutor, or a member of his or her family or household:

(a) is a party to the proceeding, or an officer, director, or trustee of a party;

(b) is acting as a lawyer or advocate in the proceeding; or

(c) is to the tribal prosecutor's knowledge likely to be a material witness in the proceeding.

#### 83.412 Prosecutor's Activities.

(1) 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.

(2) 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.

(3) 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.

### CHAPTER V: ENFORCEMENT OF CODES OF ETHICS

#### 83.501 Enforcement Responsibility.

The Judicial Committee shall have the responsibility for enforcing the provisions of the codes of ethics set forth in Chapters I through IV under the procedures set forth in this chapter. Complaints shall not be received by or acted on by the Tribal council except as appeals under sec. 83.506.

#### 83.502 Investigation.

(1) Whenever the Judicial Committee shall receive information indicating that a provision of Chapters I through IV has been violated, the Committee shall conduct an investigation of the circumstances of

the alleged violation. A member of the committee shall be delegated to conduct the investigation.

(2) During the course of an investigation the investigator may notify the respondent of the subject being investigated.

(3) The investigator 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.

#### 83.503 Review and Action by Committee.

(1) The investigator shall report the result of each investigation to the Committee and make a recommendation for disposition of the matter.

(2) The Committee shall review the recommendation and determine whether to dismiss the matter or initiate a disciplinary action.

(3) If a complaint is dismissed the complainant shall be notified of the disposition.

#### 83.504 Disciplinary Action - Procedure.

(1) If the Committee determines to proceed with a disciplinary action, the Committee shall prepare a written notice of the allegations and serve the notice upon the respondent.

(2) The respondent shall be given 10 days within which to answer the charges and request a hearing.

(3) The hearing shall be held by the Committee within 20 days of receipt of respondent's request.

(4) The hearing shall be conducted by the Committee 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.

(5) The Committee shall at the conclusion of the hearing determine based on the evidence presented whether a provision of Chapters I through IV has been violated by respondent.

#### 83.505 Disciplinary Action - Disposition.

If the Committee finds that a provision of Chapters I through IV has been violated, it shall make one of the following dispositions, taking into account the severity of the offense and other factors the Committee deems relevant:

(1) Issue a reprimand;

(2) Suspend the respondent from his or her office or duties for a period of time;

(3) Revoke respondent's license to practice or terminate respondent from his or her office.

83.506 Appeal.

A respondent aggrieved by an action of the Judicial Committee may appeal to the Tribal Council within 10 days of the Judicial Committee's action. The appeal shall be based on the record compiled at the Judicial Committee hearing. No new evidence shall be heard. The action of the Tribal Council shall be final.

83.507 Confidentiality.

(1) All papers, files and communications in an investigation and proceedings before the Committee prior to the decision to proceed with a disciplinary action are confidential.

(2) After service of a written notice on respondent under sec. 83.504(1) the proceedings and all papers filed are public.