

TITLE 6 - COURTS

CHAPTER 3 - RULES OF COURT

ARTICLE 5 - CODE OF ETHICS FOR ATTORNEYS AND ADVOCATES

History: "The Code of Ethics for Attorneys and Advocates Practicing in the Courts of the Tohono O'odham Nation," Tohono O'odham Rules of Court Section 7, were adopted on November 3, 2004.

NOTE: Pursuant to Article VIII, Section 10(d) of the Constitution of the Tohono O'odham Nation and §1106(A) of 6 T.O.C. Chapter 1, the Judicial Court is vested with the power to promulgate rules regulating pleading, practice and procedure in all Judicial Court proceedings. The Judicial Court rules are therefore subject to enactment, amendment, or repeal at any time by administrative order issued by the chief judge. Practitioners are accordingly cautioned to contact the Judicial Court for copies of current court rules.

TOHONO O'ODHAM NATION RULES OF COURT, SECTION 7

**CODE OF ETHICS FOR ATTORNEYS¹ AND ADVOCATES
PRACTICING IN THE COURTS OF THE TOHONO O'ODHAM NATION**

RULE 1: COMPETENCE

An attorney shall provide competent representation to a client. Competent legal representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

RULE 2: SCOPE OF REPRESENTATION

An attorney shall abide by a client's wishes concerning the goals of legal representation and shall consult with the client concerning the means of pursuing those goals. Attorneys should not pursue legal goals without their client's approval, nor should they assist a client in criminal or fraudulent activity.

RULE 3: DILIGENCE

An attorney shall act with reasonable diligence and promptness in representing a client. Unless the client agrees to modify the scope of representation, the attorney shall complete all matters undertaken on the client's behalf.

RULE 4: COMMUNICATION

An attorney shall keep a client well informed and shall respond promptly to requests for information. An attorney must fulfill reasonable client requests for information in order to help the client make decisions about his or her case.

RULE 5: FEES

A. Reasonableness of Fee. An attorney's fees shall be reasonable. The determination of reasonable fees should include the following considerations:

- (1) the experience and ability of the attorney providing the legal services;
- (2) the time and skill involved in performing the service; and
- (3) the fee customarily charged in the Tohono O'Odham Nation and surrounding communities for similar services.

¹ In these Rules, the term "attorney" includes lay advocates licensed to practice before the courts of the Tohono O'Odham Nation.

- B. Contingency fees: A fee may be contingent on the outcome of the representation. A contingent fee agreement should, however, be in writing and state the method by which it shall be calculated. An attorney shall not enter into a fee arrangement contingent upon securing a divorce or upon the amount of support or property settlement thereof. An attorney may not enter into a contingent fee arrangement for the representation of a defendant in a criminal case.
- C. Pro Bono Services: Representation should not be denied people because they are unable to pay for legal services. The legal profession encourages provision of legal services at no fee or at a substantially reduced fee in these circumstances.

RULE 6: CONFIDENTIALITY OF INFORMATION

An attorney shall not reveal information communicated by a client. However, an attorney may reveal information to the extent the attorney reasonably believes necessary to prevent a client from committing a criminal act likely to result in death or serious bodily harm. An attorney may also reveal information necessary to allegations in any proceedings concerning the attorney's representation of a client.

RULE 7: CONFLICT OF INTEREST

- A. An attorney should not represent a client if that representation will be adverse to the interests of another client, or if the attorney's own interests conflict with those of a client, unless:
- (1) the attorney reasonably believes the representation will not adversely affect his or her ability to represent each client fully and competently; and
 - (2) each client consents after disclosure and consultation.

Examples of conflict of interest between clients include but are not limited to: representing opposing parties in litigation, representing more than one defendant in a criminal case, and representing a client against a party who is a client in another case, even if the two cases are unrelated.

Examples of conflicts of interest between a lawyer and client include but are not limited to: entering into any business transaction with a client, and acquiring any financial interest adverse to the client.

- B. An attorney who has formerly represented a client shall not thereafter represent another client in a related matter in which that client's interest are adverse to the interests of the former client, unless the former client consents after consultation.

- C. An attorney shall not represent a client in a matter in which that attorney served as a judge, arbitrator, peacemaker, or mediator without the consent of all parties to the proceeding.

RULE 8: CLIENT UNDER DISABILITY

When an attorney believes a client is incapable of acting in his or her own best interests, the attorney shall seek the appointment of a guardian for the client. Otherwise, the attorney shall, as far as practicable, maintain a normal attorney-client relationship with the client.

RULE 9: SAFEKEEPING PROPERTY

A client's property held by an attorney in connection with representation of that client shall be kept separate from the attorney's own property. Funds shall also be kept in separate accounts.

RULE 10: DECLINING OR TERMINATING REPRESENTATION

- A. An attorney shall terminate representation if a client requests that the attorney engage in illegal or fraudulent conduct or conduct that violates these Rules of conduct.
- B. An attorney may withdraw from representing a client if withdrawal can be accomplished without adversely affecting the client's interests, or if:
- (1) the client fails substantially to meet an obligation to the attorney regarding the attorney's services and the client has been notified that the attorney will withdraw if the obligation is not met;
 - (2) the representation will result in an unreasonable financial burden on the attorney or has been made unreasonably difficult by the client; or
 - (3) other good cause for withdrawal exists.
- C. When the attorney is representing the client in a court matter, withdrawal can only be accomplished upon motion to the court. When ordered by a court of the Tohono O'Odham Nation to continue representation, an attorney shall do so despite good cause for terminating the representation. If termination of representation is granted, an attorney shall take reasonable steps to protect the client's interests. Such steps include giving reasonable notice and time to appoint new counsel, as well as surrendering papers and property to which the client is entitled.

RULE 11: ADVICE AND MERITORIOUS CLAIMS

When representing a client an attorney shall give candid advice based on his or her best professional judgment. An attorney shall not raise or controvert issues without a substantial basis for doing so.

RULE 12: EXPEDITING LITIGATION

An attorney shall make reasonable effort to expedite litigation consistent with a client's interests. An attorney shall not engage in delay tactics designed solely to frustrate the opposing party's attempt to obtain a legal remedy.

RULE 13: HONESTY TOWARD THE COURTS OF THE TOHONO O'ODHAM NATION

An attorney shall act with honesty toward the courts of the Tohono O'Odham Nation. An attorney shall not knowingly make false statements to the court or knowingly offer false evidence. Nor shall an attorney fail to disclose significant legal authority directly adverse to his or her client's position.

RULE 14: FAIRNESS TO OPPOSING PARTY

An attorney shall act in a manner fair to the opposing party. In order that fair access to evidence is maintained, an attorney shall not:

- (1) destroy or conceal evidence, including documents or other materials of possible evidentiary value;
- (2) falsify existing evidence or create new evidence; or
- (3) influence a witness to give false or misleading testimony.

RULE 15: IMPARTIALITY AND DECORUM OF THE TOHONO O'ODHAM NATION'S COURTS

An attorney shall not attempt to influence a judge or juror sitting on his or her case other than through authorized legal means. An attorney shall not privately confer with a judge concerning any case before that judge. Nor shall an attorney meet with a juror or prospective juror in a case that attorney is handling.

RULE 16: CONDUCT BEFORE THE TOHONO O'ODHAM NATION'S COURTS

An attorney shall act with respect and courtesy toward the courts of the Tohono O'Odham Nation. This requires that an attorney comply with rules established by the court for courtroom demeanor and procedure.

RULE 17: ATTORNEY AS WITNESS

An attorney shall not act as an advocate at a trial in which the attorney is likely to be a necessary witness except where:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the attorney would substantially burden the client.

RULE 18: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

Tribal prosecutors shall uphold their special responsibilities. It is a tribal prosecutor's duty to ensure that a defendant in a criminal case is accorded justice as prescribed by all laws, codes, ordinances, resolutions, and rules of the Tohono O'Odham Nation. In order to carry out this responsibility, a tribal prosecutor shall:

- (1) not prosecute a charge the prosecutor knows is not supported by probable cause;
- (2) make efforts to ensure that the accused has the opportunity to obtain counsel;
- (3) not attempt to obtain waivers of important pre-trial rights from an accused who is not represented by counsel;
- (4) disclose to the defense all evidence and information known to the prosecutor tending to negate and mitigate the guilt of the accused; and
- (5) exercise care to prevent other persons associated with the prosecutor in a criminal case from talking publicly about the case prior to trial.

RULE 19: COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

When representing a client, an attorney shall not communicate about that representation with a party the attorney knows to be represented by another attorney in the same proceeding unless the attorney has that attorney's consent.

RULE 20: COMMUNICATIONS CONCERNING AN ATTORNEY'S SERVICES

An attorney shall not make false or misleading statements about his or her services. A communication is false or misleading if it contains a material misrepresentation of fact or law or is likely to create unreasonable expectations about the results an attorney can achieve.

RULE 21: SOLICITING CLIENTS

An attorney shall not solicit employment from a prospective client through direct communications. Apart from family members, it is unethical for an attorney to contact in person, by phone, or by mail prospective clients for the purpose of persuading them to accept legal assistance. This does not include mailings to persons not known who might request legal services. Such mailings may only give general information about an attorney's services. An attorney may advertise through public media such as telephone directories, newspapers, and television.

The foregoing "Code of Ethics for Attorneys and Advocates Practicing in the Courts of the Tohono O'Odham Nation" are hereby adopted this 03 day of Nov., 2004, by the courts of the Tohono O'Odham Nation.


Chief Judge **Betsy Norris**