



Attorney and Lay Legal Advocates: Ethics and Professionalism in Tribal Courts

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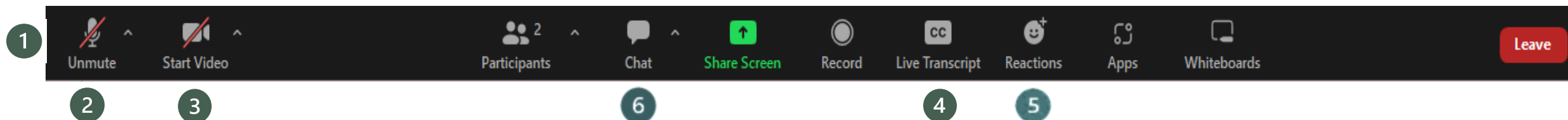
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Overview

- ▶ What are professional ethics?
- ▶ Why are professional ethics important?
- ▶ What are some of the Issues that ethics rules commonly address?
- ▶ What procedures and forums might be implemented to enforce professional ethics and standards?
- ▶ Examples from the field



What are professional ethics?

- ▶ Rules, principles or standards that govern the conduct of professional lawyers and legal advocates



Why are professional ethics important?

- ▶ Help to improve the quality of legal services to clients
 - ▶ Help to ensure that legal services are provided in a manner that is confidential, honest and fair
 - ▶ Provision of legal services in an ethical manner
- ▶ Help to avoid conflicts of interest and improve competency of professionals providing legal services
- ▶ Help to ensure that professional attorneys and legal advocates conduct themselves in a manner that is respectful to the Tribal Court and Tribal justice system



Why professional Ethics are important for Tribal Courts

- ▶ They regulate the conduct of attorneys and lay advocates practicing in Tribal Courts and providing services to clients in Tribal jurisdictions
- ▶ Tribes have inherent authority to regulate conduct and ensure Tribal values are incorporated
- ▶ Provide safeguards for attorneys and legal advocates who are practicing in Tribal Courts and in doing so can encourage professionals to provide representation
- ▶ Professional ethical standards can help to ensure fairness and equality within Tribal justice systems thereby supporting the integrity of Tribal justice system



Who should ethical standards apply to?



Professional attorneys



Lay legal advocates

Resources to Look to When Creating Tribal Rules

- ▶ Consider the ABA Model Rules of Professional Conduct
- ▶ Look to other Tribal Rules as examples
- ▶ Consider Tribal Customs and values





Issues that Professional
Ethics Rules commonly
address

Qualifications
to become
licensed by
the Tribe or
Admission to
Tribal Bar



PROFESSIONAL
ATTORNEYS



LAY ADVOCATES

Attorney-Client Rules

- ▶ Govern the scope of legal representation including duties and responsibilities of the attorney while they perform legal services including
 - ▶ Diligence
 - ▶ Communications
 - ▶ Fees
 - ▶ Confidentiality
 - ▶ Special rules when representing clients with diminished capacity
 - ▶ Terminating legal representation



Competency & Diligence

- ▶ Ensure attorneys and lay legal advocates possess necessary legal knowledge and skill to provide representation
- ▶ Ensure attorneys and lay legal advocates are adequately prepared to provide legal representation based upon the difficulty of the case. Often involves:
 - ▶ Legal knowledge and trial skills
 - ▶ Meetings with clients and witnesses in advance of trial
 - ▶ Collection and review of evidence and information relevant to the case
- ▶ Ensure the performance of legal services without unnecessary delay



Attorney Communications and Transactions with clients

- ▶ These rules will impact how the attorney conducts themselves when dealing with people who are their clients and will often address
 - ▶ Confidentiality
 - ▶ Diligence in keeping clients reasonably informed about the status of their case



Attorney Communications and Transactions with non-clients

- ▶ These rules will impact how the attorney conducts themselves when dealing with people who are not their clients and will often address
 - ▶ Truthfulness in communications
 - ▶ Expectations when communicating with people who are represented by counsel
 - ▶ Expectations when communicating with people who are not represented by legal counsel
 - ▶ Respecting rights of third persons



Ex Parte Communications

Generally, attorneys or legal advocates cannot communicate with judges or jurors outside of a formal court hearing unless permitted by law or court order

Generally, lawyers or legal advocates are prohibited from communicating directly with another litigant when that litigant has legal representation



Conflicts of Interest

- ▶ Prohibit legal representatives from representing others when their personal or professional interests or those of another client could compromise their professional judgement
- ▶ Rules may define duties and responsibilities to current clients
- ▶ Rules may define duties and responsibilities to former clients



Fiscal Issues



Retainers

Most professional ethics rules require that any funds paid as a retainer be held in separate accounts and not used until earned through provision of legal services with any unused portion being returned to the client

Most jurisdictions have found nonrefundable retainers to be impermissible



Attorney or Advocate rates (hourly or flat rates)

Rates should be reasonable when considering time, labor and skill involved in the provision of legal services as well as the difficulty of the case and/or the customary fee charged by others in the community



Other issues to consider

Respect for Tribal
sovereignty and
adherence to Tribal law

Including requirements
that attorneys and lay
legal advocates adhere
to Tribal customs or
culturally specific legal
traditions when applicable





Enforcing ethical rules

Persons or Forums to Enforce Rules

- ▶ Roles of Tribal Court Judges
 - ▶ Ensure fair proceedings by requiring attorneys or lay legal advocates to follow legal rules and procedures
 - ▶ Correct or report any attorney misconduct that the judge observes
- ▶ Forums for enforcement and complaint process
 - ▶ May be a disciplinary board or other forum established by the Tribe to receive, investigate and conduct hearings relevant to complaints of ethical violations



Remedies for violations

- ▶ Common remedial measures
 - ▶ Reprimand
 - ▶ Suspension
 - ▶ Disbarment





Examples from the field

Tribal Code Examples

- ▶ **Lac du Flambeau Band of Lake Superior** [Code of Ethics](#) has Section for judicial ethics, Clerks of Court Ethics, and persons Practicing Before the Court
- ▶ **Nottawaseppi Huron Band of the Potawatomi** [Court Rules of Professional Conduct for Attorneys](#)
- ▶ **Nooksack Indian Tribe** [Advocates Code of Conduct](#) - this Code is written for advocates but lists duties typical of attorneys
- ▶ **Hoopa Valley Indian Reservation** [Professional Ethics Code for Spokespersons and Attorneys](#) - for attorneys and “spokesperson” which is defined as any person duly admitted and recognized by the Hoopa Tribal Court Bar



Case Examples of attorney or lay legal advocate violations of professional ethics

- ▶ **Conflict of Interest**

- ▶ In re Lile, 2025 Muscogee Creek Nation - NILL

- ▶ **Lack of Competency & Diligence in Legal Representation**

- ▶ In re Disciplinary Action Against W. Martins - NARF
 - ▶ In the Matter of Disbarment of W. Bird Necklace - OST

- ▶ **Failure to Maintain Retainer in Separate Account and/or Excessive Fees**

- ▶ Committee on Legal Ethics v. Tatterson - WV





Questions?

Thank You!

Please email us at
WOCG@TLPI.org if you
have more questions



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