



Judicial Ethics and Professionalism in Tribal Courts

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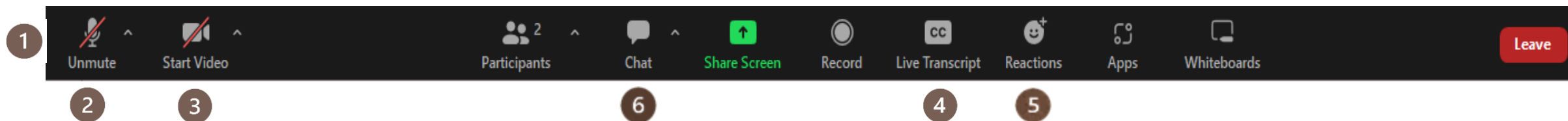
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Overview

- ▶ What are judicial ethics?
- ▶ Why are judicial ethics important?
- ▶ What are the most common judicial ethics rules (or “canons”)?
- ▶ What is the process to enforce judicial ethics canons, and the standards to use in that process?
- ▶ Examples from the field

What Are "Judicial Ethics"?

- ▶ They are standards and rules that set forth the broad obligations of judges
- ▶ These standards may be applied to conduct in the performance of work-related duties
- ▶ These standards may also be applied to certain conduct in personal affairs and life

Why Are Judicial Ethics Important?

- ▶ A fair justice system is essential to uphold public trust in the government
- ▶ If judges are unethical, a fair justice system is impossible
- ▶ Ethical judges help ensure:
 - ▶ Adherence to the rule of law
 - ▶ The protection of human rights
 - ▶ Predictability and stability
 - ▶ Accountability
 - ▶ Peaceful and proper dispute resolution



Typical Judicial Ethics Canons/Rules

Canon 1

A Judge Should Uphold The Integrity And Independence Of The Judiciary

- ▶ The responsibility falls on the Judge to uphold the integrity and independence of the court.
- ▶ Although judges must be independent, they must comply with the law and with ethical canons.

Canon 2

A Judge Should
Avoid Impropriety
And The Appearance
Of Impropriety In
All Activities

- ▶ Judicial actions should promote public confidence in the integrity and impartiality of the judiciary.

Canon 3

A Judge Should
Perform The
Duties Of The
Office Fairly,
Impartially, And
Diligently

- ▶ A judge should be faithful to the law and not be swayed by partisan interests, public opinion, or fear of criticism.

Canon 4

A Judge May
Engage In
Extrajudicial
Activities That Are
Consistent With
The Obligations
Of Judicial Office

- ▶ A judge may engage in extrajudicial activities, including charitable, educational, religious, and governmental activities.

Canon 5

A Judge Should Refrain From Political Activity

- ▶ A judge may not:
 - ▶ hold office in a political organization
 - ▶ publicly advocate for a political party or candidate for public office
 - ▶ solicit funds for, or contribute to, a political organization or a candidate for public office



Key Inclusions for Tribal Canons of Judicial Ethics

What Should Tribal Judicial Canons Of Ethics Address?



They must set forth in clear terms the canons of ethical conduct



They must provide a process to file complaints against judges



They must provide a forum for the fair resolution of ethical complaints



They must detail the standards that will be applied to determine whether judicial misconduct has occurred.



They must provide for appropriate remedies

Process For Filing Ethical Complaints

- ▶ Each tribe has the right to establish its own process for accepting judicial complaints.
- ▶ The process should be in writing and simple

Forum To Address Ethical Complaints

- ▶ Each Tribe has the right to create its own forum and process for addressing judicial complaints.
- ▶ The tribe can make the entire process confidential or make the complaint and the decision publicly available.

Standards Of Review

- ▶ Each tribe has the right to establish its own standards to review judicial complaints. The standard set in the U.S. Constitution for removal is “high crimes and misdemeanors.”
- ▶ The Tribal Court Clearinghouse, a project of the Tribal Law and Policy Institute (TLPI), lists the following standards that tribes may wish to adopt:

Standards Of Review Considerations

- ▶ a. Conviction of a felony.
- ▶ b. Professional incompetence.
- ▶ c. Chronic alcoholism or other substance abuse.
- ▶ d. Conviction of a misdemeanor involving dishonesty or acts offensive to the morals of the community.
- ▶ e. Flagrant violations of ethical standards or tribal customs.
- ▶ f. Repeated failure to perform duties.
- ▶ g. Failure to complete required training.

Remedies

- ▶ Each tribe has the right to determine what remedies to impose for violation of judicial canons.
- ▶ Options include dismissal, public censure, a requirement of additional training, and barring the judge from hearing certain cases.
- ▶ TLPI recommends that suspension with treatment should be considered as an alternative to removal when appropriate.



Examples from the Field: Process for Enforcement and Ethical Standards

Examples From The Field

Mr. Pevar will provide examples of actual cases in which judges were disciplined for violating judicial canons. Hundreds of judges—federal, state, and tribal—have been disciplined for a wide variety of reasons. Congress, for instance, has removed for cause eight federal judges, with the most recent removal occurring in 2010.

Resources

- ▶ **Navajo** Judicial Code of Conduct:

<https://courts.navajo-nsn.gov/judicial-code-of-conduct/>

- ▶ **Fort Peck** Tribal Court Code of Judicial Conduct

https://indianlaw.mt.gov/_docs/fortpeck/codes/append6.pdf

- ▶ **Oglala Sioux** Tribes Code of Judicial Ethics – Section 2.7

https://www.narf.org/nill/codes/oglala_sioux/chapter01-courtproc.html

- ▶ Code of Conduct for **United States** Judges

<https://www.uscourts.gov/administration-policies/judiciary-policies/ethics-policies/code-conduct-united-states-judges>



Questions?

Thank You!

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



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