

# Choctaw Nation Bar Association Rules, Code of Ethical Conduct and Judicial Cannons

<b>Title 1. Attorneys and the Bar. ....</b>	<b>6</b>
Section 1. Choctaw Nation of Oklahoma Bar Association .....	6
Section 2. Rules of Professional Conduct .....	8
<b>APPENDIX “A” Rules of Professional Conduct for Attorneys Scope of the Rules ..</b>	<b>8</b>
PREAMBLE: Responsibilities of the Lawyer .....	10
DEFINITIONS .....	12
<b>Client-Lawyer Relationship .....</b>	<b>14</b>
Rule 1.1. Competence. ....	14
Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer. ....	14
Rule 1.3. Diligence. ....	14
Rule 1.4. Communication. ....	15
Rule 1.5. Fees. ....	15
Rule 1.6. Confidentiality of Information. ....	16
Rule 1.7. Conflict of Interest: Current Clients. ....	17
Rule 1.8. Conflict of Interest; Prohibited Transactions. ....	18
Rule 1.9. Conflict of Interest: Duties to Former Client. ....	19
Rule 1.10. Imputation of Conflicts of Interests: General Rule. ....	20
Rule 1.11. Successive Government and Private Employment. ....	21
Rule 1.12. Former Judge or Arbitrator. ....	22
Rule 1.13. Organization as Client. ....	23
Rule 1.14. Client with Diminished Capacity. ....	24
Rule 1.15. Safekeeping Property. ....	24
Rule 1.16. Declining or Terminating Representation. ....	26
Rule 1.17. Sale of Law Practice. ....	27
Rule 1.18. Duties to Prospective Client .....	29

<b>The Lawyer as Counselor .....</b>	<b>29</b>
Rule 2.1. Advisor.....	29
Rule 2.2. Intermediary.....	30
Rule 2.3. Evaluation for Use by Third Persons. ....	30
Rule 2.4. Lawyer Serving As Third-Party Neutral .....	30
<b>The Lawyer as Advocate .....</b>	<b>31</b>
Rule 3.1. Meritorious Claims and Contentions.....	31
Rule 3.2. Expediting Litigation. ....	31
Rule 3.3. Candor Toward the Tribunal.....	31
Rule 3.4. Fairness to Opposing Party and Counsel.....	32
Rule 3.5. Impartiality and Decorum of the Tribunal. ....	32
Rule 3.6. Trial Publicity.....	33
Rule 3.7. Lawyer as Witness.....	33
Rule 3.8. Special Responsibilities of a Prosecutor.....	33
Rule 3.9. Advocate in Non-adjudicative Proceedings. ....	34
<b>Transactions with Persons Other than Clients .....</b>	<b>34</b>
Rule 4.1. Truthfulness in Statements to Others.....	34
Rule 4.2. Communication with Person Represented by Counsel. ....	35
Rule 4.3. Dealing with Unrepresented Person. ....	35
Rule 4.4. Respect for Rights of Third Person. ....	35
<b>Law Firms and Associations .....</b>	<b>35</b>
Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers. ....	35
Rule 5.2. Responsibilities of a Subordinate Lawyer. ....	36
Rule 5.3. Responsibilities Regarding Non-lawyer Assistants.....	36
Rule 5.4. Professional Independence of a Lawyer. ....	36
Rule 5.6. Restrictions on Right to Practice. ....	38
Rule 5.7. Responsibilities Regarding Law-Related Services.....	38
<b>Public Service.....</b>	<b>39</b>
Rule 6.1. Pro Bono Public Service. ....	39

Rule 6.2. Accepting Appointments. ....	39
Rule 6.3. Membership in Legal Services Organization. ....	39
Rule 6.4. Law Reform Activities Affecting Client Interests. ....	40
Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs ....	40
<b>Information About Legal Services .....</b>	<b>40</b>
Rule 7.1. Communications Concerning a Lawyer’s Services. ....	40
Rule 7.2. Advertising. ....	40
Rule 7.3. Direct Contact With Prospective Clients. ....	41
Rule 7.4. Communication of Fields of Practice and Certification. ....	42
Rule 7.5. Firm Names and Letterheads.....	42
<b>Maintaining the Integrity of the Legal Profession.....</b>	<b>43</b>
Rule 8.1. Bar Admission and Disciplinary Matters. ....	43
Rule 8.2. Judicial and Legal Officials. ....	43
Rule 8.3. Reporting Professional Misconduct. ....	43
Rule 8.4. Misconduct.....	43
Rule 8.5. Disciplinary Authority; Choice of Law .....	44
<b>APPENDIX “B” .....</b>	<b>44</b>
<b>CODE OF JUDICIAL CONDUCT .....</b>	<b>44</b>
Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary. ....	44
Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All ..... of the Judge’s Activities.....	45 45
Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently. .	45
Canon 4. A Judge Should so Conduct the Judge’s Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.....	48
<b>Application of the Code of Judicial Conduct .....</b>	<b>53</b>
<b>Rules Governing Disciplinary Proceedings.....</b>	<b>53</b>
<b>RULE 1. Jurisdiction of the Court in the Discipline of Lawyers and the Unauthorized Practice     of Law .....</b>	<b>53</b>
Rule 1.1: Declaration of Jurisdiction.....	53

Rule 1.2: Implied Exceptions Negated.....	53
Rule 1.3: Discipline for any Act Contrary to the Prescribed Standards of Conduct. ....	54
Rule 1.4: Controversies Regarding Fees. ....	54
Rule 1.5: Code of Professional Responsibility. ....	54
Rule 1.6: Code of Judicial Conduct.....	54
Rule 1.7: Discipline. ....	54
<b>Rule 2. Reserved</b> .....	<b>55</b>
<b>Rule 3. Reserved</b> .....	<b>55</b>
<b>Rule 4. Reserved</b> .....	<b>55</b>
<b>Rule 5. Filing and Processing of Grievances and Requests for Investigation.</b> .....	<b>55</b>
Rule 5.1: Form of Grievances, Requests for Investigations, and Referrals Into a Diversion Program. .....	55
Rule 5.2: Filing and Processing of Grievances and Requests for Investigation. ....	56
Rule 5.3: Initial Action by the Court of Appeals. ....	57
Rule 5.4: Grievances Privileged.....	57
Rule 5.5: Continuation of Proceedings notwithstanding Failure to Prosecute, Withdrawal or Settlement of Grievance. ....	58
Rule 5.6: Pending Litigation. ....	58
Rule 5.7: Confidentiality of Disciplinary Investigations and Results. ....	58
Rule 5.8: Confidentiality of Disciplinary Records. ....	58
Rule 5.9: Proceedings which are to be a Matter of Public Record. ....	58
<b>Rule 6. Formal Proceedings before the Court of Appeals</b> .....	<b>59</b>
Rule 6.1. Manner of Instituting.....	59
Rule 6.2. Contents of the Formal Complaint. ....	59
Rule 6.2A. Emergency Interim Suspension Orders and Related Relief. ....	59
Rule 6.3. Notification of Filing of Complaint. ....	60
Rule 6.4. Response to Complaint.....	60
Rule 6.5. Amendment of Complaint. ....	60
Rule 6.6. Reserved.....	61
Rule 6.7. Setting and Notification of Hearing.....	61
Rule 6.8. Depositions and Discovery. ....	61
Rule 6.9. Hearing Open to the Public. ....	61

Rule 6.10. Record of Proceedings. ....	61
Rule 6.11. Power of the Court of Appeals in the Conduct of Proceedings. ....	61
Rule 6.12. Evidence, Procedure and Standard of Proof. ....	62
Rule 6.13. Reserved. ....	62
Rule 6.14. Reserved. ....	62
Rule 6.15. Decision by the Court of Appeals. ....	62
Rule 6.16. Cost of Investigations and Disciplinary proceedings Where Discipline Results. ....	63
<b>Rule 7. Summary Disciplinary Proceedings Before the Court of Appeals. ....</b>	<b>63</b>
Rule 7.1. Criminal Conviction of a Lawyer. ....	63
Rule 7.2. Reserved. ....	63
Rule 7.3. Interim Suspension from Practice. ....	63
Rule 7.4. Conviction Becoming Final without Appeal. ....	63
Rule 7.5. Appeal of Conviction. ....	63
Rule 7.6. Disciplinary Proceedings Based Upon Same Facts as Criminal Proceeding. ....	64
Rule 7.7. Disciplinary Action in Other Jurisdictions, as Basis for Discipline. ....	64
Rule 7.8. Reserved. ....	64
Rule 7.9. Reserved. ....	64
Rule 7.10. Reserved. ....	64
<b>Rule 8. Resignation Pending Disciplinary Proceedings. ....</b>	<b>64</b>
Rule 8.1. Prerequisites for Resignation. ....	64
Rule 8.2. Order Approving; Reinstatement. ....	65
<b>Rule 9. Procedure Following Disciplinary Action by the Court of Appeals and Notice thereof; Winding up of Business of Deceased, Disciplined or missing Lawyer. ....</b>	<b>65</b>
Rule 9.1. Notice to Clients; List of other Bars to which Admitted. ....	65
Rule 9.2. Notice to Other Jurisdictions. ....	65
Rule 9.3. Appointment of Attorneys to Wind Up the Lawyer’s Business. ....	66
<b>Rule 10. Suspension for Personal Incapacity to Practice Law. ....</b>	<b>66</b>
Rule 10.1. Definition. ....	66
Rule 10.2. Suspension. ....	66
Rule 10.3. Procedure in General. ....	66
Rule 10.4. Inquiry as to Personal Incapacity to Practice Law, Incidental to Disciplinary Proceedings. ....	67

Rule 10.5. Joinder of Disciplinary Charges with Charges of Personal Incapacity to Practice Law...	67
Rule 10.6. Representation by Counsel.....	67
Rule 10.7. Service of Process or Notice.....	68
Rule 10.8. Proof by Certified Copies.....	68
Rule 10.9. Examination by Physicians.....	68
Rule 10.10. Proceedings in the Court of Appeals.....	68
Rule 10.11. Application for Reinstatement.....	68
Rule 10.12. Confidentiality.....	69
<b>Rule 11. Reinstatement.....</b>	<b>69</b>
Rule 11.1. Petition for Reinstatement.....	69
Rule 11.2. Investigation by the Court of Appeals or Special Prosecutor.....	70
Rule 11.3. Reinstatement Hearing.....	70
Rule 11.4. Standard of Proof for Petitions for Reinstatement.....	70
Rule 11.5. Findings Prerequisite to Reinstatement.....	70
Rule 11.6. Decision by the Court of Appeals.....	71
Rule 11.7. Notice of Decision and Petition for Rehearing.....	71
Rule 11.8. Reinstatement without Order after Suspensions of Two (2) Years or Less.....	71
<b>Rule 12. Reserved.....</b>	<b>71</b>
<b>Rule 13. Service.....</b>	<b>71</b>
Rule 13.1. Manner of Service.....	71
<b>Rule 14. Reserved.....</b>	<b>72</b>
<b>Rule 15. Immunity.....</b>	<b>72</b>
Rule 15.1. Immunity for Official Acts.....	72

**Title 1. Attorneys and the Bar.**

**Section 1. Choctaw Nation of Oklahoma Bar Association**

- A. Any person shall be authorized to practice as an attorney and counselor at law in any Court of the Choctaw Nation who has been admitted to the Bar of the Choctaw Nation of Oklahoma.
- B. The Bar of the Choctaw Nation shall be open to any person who:

1. Possesses good moral character, due respect for the law and fitness to practice law;
  2. Is at least 18 years of age; and
  3. Is an attorney at law and is admitted to practice before the highest court of any state of the United States and is a member in good standing of such Bar or has been licensed by the Oklahoma Supreme Court as a Licensed Legal Intern; however, all interns must comply with the provisions of Oklahoma law while practicing in the courts of the Choctaw Nation.
- C. All persons authorized under this Section shall become members of the Choctaw Nation of Oklahoma Bar Association and their names shall be added to the Roll of Attorneys for the Court of Appeals of the Choctaw Nation of Oklahoma upon paying an annual membership fee of fifty dollars (\$50.00), and such other additional fees as the Court of Appeals of the Choctaw Nation may assess, to the Clerk of the Court and taking and signing the following oath before the Clerk of the Court:
- “I do solemnly swear that I will support, protect and defend the Constitution of the United States, and the Constitution of the Choctaw Nation of Oklahoma; that I will do no falsehood, or consent that any be done in court, and if I know of any I will give knowledge thereof to the judges of the court, or some one of them, that it may be reformed; I will not wittingly, willingly or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same; I will delay no person for lucre or malice, but will act in the office of attorney in all courts according to my best learning and discretion with all good fidelity as well to the court as to my client, so help me God.”
- D. No person shall practice as an attorney and counselor at law in any court of the Choctaw Nation of Oklahoma who is not a citizen of the United States, or who holds a commission as a judge of any court of the Choctaw Nation of Oklahoma, or who is a tribal law enforcement officer; nor shall the clerk of the Court of Appeals, or the clerk of the District Court, or the deputy of either, practice in the particular court of which he is clerk or deputy clerk.
- E. All fees collected from members of the Choctaw Nation of Oklahoma Bar Association shall be deposited in the Court Fund.
- F. Attorneys who are members in good standing of the Bar Association of the Choctaw Nation Court of Indian Offenses shall automatically become members of the Choctaw Nation Bar Association for the remainder of the one-year term coinciding with the payment of annual membership dues; thereafter, all members must pay annual membership dues to be a member of good standing of the Choctaw Nation Bar Association.

- G. Attorneys, their spouses, or anyone to whom said attorneys have conveyed property for the purpose of signing bonds for said attorneys, are prohibited from signing any bonds as surety in any civil or criminal action, pending or about to be commenced in any of the courts of the Courts of the Choctaw Nation. No court clerk or judicial officer shall accept any bonds signed by licensed attorneys, their spouses or anyone to whom said attorneys have conveyed property for the purpose of signing bonds for said attorneys. All such bonds, signed by an attorney or his or her spouse, shall be absolutely void, and no penalty can be recovered of the attorney or his or her spouse signing the same.

## **Section 2. Rules of Professional Conduct**

- A. The Court of Appeals of the Choctaw Nation shall, within ninety (90) days of the passage of this section, promulgate Rules for the Professional Conduct of Attorneys practicing law before the courts of the Choctaw Nation and Canons of Judicial Ethics which shall apply to all judges of the Choctaw Nation and other court personnel as designated by the Court of Appeals of the Choctaw Nation. The Court of Appeals may revise the Rules for the Professional Conduct of Attorneys or the Canons of Judicial Ethics at any time; however, the Tribal Council must be given notice of the revisions sixty (60) days before said rules or canons take effect.
- B. The Rules of Professional Conduct for Attorneys and Canons of Judicial Ethics shall be codified as Appendixes “A” and “B” respectively at the end of this Title 1.

### **APPENDIX “A” Rules of Professional Conduct for Attorneys Scope of the Rules**

- A. These Rules of Professional Conduct for Attorneys shall be rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the rules are imperatives, cast in the terms “shall” or “shall not.” Such Rules define proper conduct for purposes of professional discipline. Others, generally cast in the term “may,” are permissive and define areas under the Rules in which the lawyer has professional discretion. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer’s professional role.
- B. The Rules presuppose a larger legal context shaping the lawyer’s role. That context includes court rules and statutes relating to matters of licensure and laws defining specific obligations of lawyers and substantive and procedural law in general. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

- C. Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether an attorney-client relationship exists. Most of the duties flowing from the attorney-client relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality that may attach when the lawyer agrees to consider whether an attorney-client relationship shall be established. Whether an attorney-client relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.
- D. Under various legal provisions, including statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private attorney-client relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Also, government lawyers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.
- E. Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.
- F. Violation of a Rule should not give rise to a cause of action nor should it create presumption that a legal duty has been breached. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.
- G. Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the

privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the Rules has limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

- H. The lawyer's exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.
- I. This Section on the Scope of the Rules provides general orientation to the Rules, but the text of each Rule is authoritative.

#### **PREAMBLE: Responsibilities of the Lawyer**

- A. A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.
- B. As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.
- C. In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.
- D. In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.
- E. A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use

the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

- F. As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time or resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.
- G. Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.
- H. A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.
- I. In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

- J. The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.
- K. To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulations is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.
- L. The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.
- M. Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

## **DEFINITIONS**

- A. In the construction of this Act, the following rules of construction and definitions shall be observed unless inconsistent with the manifest intent of the Legislature or the context clearly requires otherwise:
  - 1. "Belief" or "Believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
  - 2. "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (6) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.
  - 3. "Consult" or "Consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

4. "Firm" or "Law Firm" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization.
5. "Fraud" or "Fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.
6. "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
7. "Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
8. "Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation.
9. "Reasonable" or "Reasonably," when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.
10. "Reasonable Belief" or "Reasonably Believes," when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
11. "Reasonably Should Know," when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
12. "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.
13. "Substantial," when used in reference to degree or extent, denotes a material matter of clear and weighty importance.
14. "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.
15. "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and e-mail. A "signed" writing includes an

electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

- B. Words and phrases are construed according to the common and approved usage of the language, but technical words and phrases and others that have acquired a peculiar and appropriate meaning in the law are construed and understood according to such meaning.

## **Client-Lawyer Relationship**

### **Rule 1.1. Competence.**

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

### **Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.**

- A. Subject to paragraphs (C) and (D), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- B. A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- C. A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.
- D. When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct. A lawyer shall act with reasonable diligence and promptness in representing a client.

### **Rule 1.3. Diligence.**

A lawyer shall act with reasonable diligence and promptness in representing a client.

**Rule 1.4. Communication.**

- A. A lawyer shall:
  - 1. promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in APPENDIX A is required by these Rules;
  - 2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - 3. keep the client reasonably informed about the status of the matter;
  - 4. promptly comply with reasonable requests for information; and
  - 5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional conduct or other law.
- B. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**Rule 1.5. Fees.**

- A. A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
  - 1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - 2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - 3. the fee customarily charged in the locality for similar legal services;
  - 4. the amount involved and the results obtained;
  - 5. the time limitations imposed by the client or by the circumstances;
  - 6. the nature and length of the professional relationship with the client;
  - 7. the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - 8. whether the fee is fixed or contingent.

- B. The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.
- C. A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (D) or other law. A contingent fee agreement shall be in writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter, and, if there is a recovery, showing the remittance to the client and the method of determination.
- D. A lawyer shall not enter into an arrangement for, charge, or collect:
  - 1. any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
  - 2. a contingent fee for representing a defendant in a criminal case.
- E. A division of a fee between lawyers who are not in the same firm may be made only if:
  - 1. the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
  - 2. the client agrees to the arrangement and the agreement is confirmed in writing; and
  - 3. the total fee is reasonable.

**Rule 1.6. Confidentiality of Information.**

- A. A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (B).
- B. A lawyer may reveal information relating to representation of a client to the extent the lawyer reasonably believes necessary:
  - 1. to prevent reasonably certain death or substantial bodily harm;

2. to prevent the client from committing:
  - i. a crime; or
  - ii. a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
3. to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services, provided that the lawyer has first made reasonable efforts to contact the client so that the client can rectify such criminal or fraudulent act, but the lawyer has been unable to do so, or the lawyer has contacted the client and called upon the client to rectify such criminal or fraudulent act and the client has refused or has been unable to do so;
4. to secure legal advice about the lawyer's compliance with these Rules;
5. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
6. as permitted or required to comply with these Rules, other law or a court order.

**Rule 1.7. Conflict of Interest: Current Clients.**

- A. Except as provided in paragraph (B), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  1. the representation of one client will be directly adverse to another client; or
  2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- B. Notwithstanding the existence of a concurrent conflict of interest under paragraph (A), a lawyer may represent a client if:
  1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  2. the representation is not prohibited by law;

3. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
4. each affected client gives informed consent, confirmed in writing.

**Rule 1.8. Conflict of Interest; Prohibited Transactions.**

- A. A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
  1. the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;
  2. the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
  3. the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- B. A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
- C. A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, for the lawyer or a person related to the lawyer. Nor shall the lawyer prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative.
- D. Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- E. A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
  1. a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
  2. a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

- F. A lawyer shall not accept compensation for representing a client from one other than the client unless:
1. the client gives informed consent;
  2. there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
  3. information relating to representation of a client is protected as required by Rule 1.6.
- G. A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- H. A lawyer shall not:
1. make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or
  2. settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.
- I. A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
1. acquire a lien authorized by law or contract to secure the lawyer's fee or expenses; and
  2. contract with a client for a reasonable contingent fee in a civil case.
- J. A lawyer shall not have sexual relations with a client unless:
1. a consensual sexual relationship existed between them when the client-lawyer relationship commenced and
  2. the relationship does not result in a violation of Rule 1.7(A)(2).
- K. While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (A) through (I) that applies to any one of them shall apply to all of them.

**Rule 1.9. Conflict of Interest: Duties to Former Client.**

- A. A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
- B. A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
  - 1. whose interests are materially adverse to that person; and
  - 2. about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(C) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

- C. A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
  - 1. use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has been generally known; or
  - 2. reveal information relating to the representation except as these Rules would permit or require with respect to a client.

**Rule 1.10. Imputation of Conflicts of Interests: General Rule.**

- A. While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not represent a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.
- B. When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
  - 1. the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
  - 2. any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9 (C) that is material to the matter.

- C. A disqualification prescribed by this rule may be waived in writing by the affected client under the conditions stated in Rule 1.7.
- D. The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.
- E. Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (K) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

**Rule 1.11. Successive Government and Private Employment.**

- A. Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the Choctaw Nation:
  - 1. is subject to Rule 1.9(C); and
  - 2. shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.
- B. When a lawyer is disqualified from representation under paragraph (A), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
  - 1. the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
  - 2. written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.
- C. Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under the authority of the Choctaw Nation and which, at the time this Rule applied, the Choctaw Nation is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

D. Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee :

1. is subject to Rules 1.7 and 1.9; and

2. shall not:

- i. participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate agency of the Choctaw Nation gives its informed consent, confirmed in writing; or
- ii. negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12 (B) and subject to the conditions stated in Rule 1.12 (B).

E. As used in this Rule, the term “matter” includes:

1. any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and
2. any other matter covered by the conflict of interest rules of the appropriate government agency.

**Rule 1.12. Former Judge or Arbitrator.**

A. Except as stated in paragraph (D), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person, or as a mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

B. A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer or arbitrator may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer or arbitrator.

C. If a lawyer is disqualified by paragraph (A), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

1. the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
  2. written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.
- D. An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

**Rule 1.13. Organization as Client.**

- A. A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- B. If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interests of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.
- C. Except as provided in paragraph (D), if:
1. despite the lawyer's efforts in accordance with paragraph (B), the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
  2. the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

- D. Paragraph (C) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.
- E. A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (B) or (C), or who withdraws under

circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

- F. In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
- G. A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

**Rule 1.14. Client with Diminished Capacity.**

- A. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- B. When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian *ad litem*, conservator or guardian.
- C. Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (B), the lawyer is impliedly authorized under Rule 1.6(A) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

**Rule 1.15. Safekeeping Property.**

- A. A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the written consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- B. A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account but only in an amount necessary for that purpose.

- C. A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- D. Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- E. When in connection with a representation, a lawyer possesses funds or other property in which both the lawyer and another person claim interests, the funds or other property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved, and the undisputed portion of the funds shall be promptly distributed.
- F. Where funds or other items of property entrusted to a lawyer have been impressed with a specific purpose as to their use, they shall retain that specific character unless otherwise authorized by a client or third person or prohibited by law. Where funds are impressed with a specific purpose, a lawyer may not subject them to a counterclaim, set off for fees, or subject them to a lien.
- G. All members of the Bar who are required under the Rules of Professional Conduct, to maintain a trust account for the deposit of clients' funds entrusted to said lawyer, shall do so and furnish information regarding said account(s) as hereinafter provided. Each member of the Bar shall provide the Court of Appeals with the name of the bank or banks in which the lawyer carries any trust account, the name under which the account is carried and the account number. The lawyer or law firm shall provide such information at the time of joining the Choctaw Nation Bar Association and shall review and revise the information as necessary every year when the annual bar membership dues are paid. Provisions will be made for a response by lawyers who do not maintain a trust account and the reason for not maintaining said account. Information received by the Court of Appeals as a result of this inquiry shall remain confidential except as provided by the Rules Governing Disciplinary Proceedings. Failure of any lawyer to respond giving the information requested by the Court of Appeals will be grounds for appropriate discipline.
- H. A lawyer or law firm that holds funds of clients or third parties in connection with a representation shall create and maintain an interest-bearing demand trust account and shall deposit therein all such funds to the extent permitted by applicable banking laws, that are nominal in amount or to be held for a short period of time in compliance with the following provisions:
  - 1. the account may be established with any bank or savings and loan association authorized by federal or state law to do business and insured by the Federal Deposit Insurance Corporation;

2. the rate of interest payable on the account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby;
  3. the lawyer or law firm shall not deposit funds belonging to the lawyer or law firm in the account, except that funds necessary to comply with the depository institution's minimum balance requirements for the maintenance of the account or funds needed to pay applicable fees and service charges may be deposited therein;
  4. in determining whether to use the interest-bearing account herein specified, the lawyer shall consider whether the funds to be invested could be utilized to provide a positive net return to the client, taking into consideration the following factors:
    - i. the amount of interest that the funds would earn during the period they are expected to be deposited;
    - ii. the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's benefit; and
    - iii. the capability of financial institutions to calculate and pay interest to individual clients;
  5. The requirements of paragraph (H) shall not apply if:
    - i. it is not feasible for the lawyer or law firm to establish an interest-bearing trust account for reasons beyond the control of the lawyer or law firm, such as the unavailability of a financial institution which offers such an account in the community where the principal office of the lawyer or law firm is situated, or
    - ii. those financial institutions which offer such an account in the community where the principal office of the lawyer or law firm is situated impose fees and service charges that routinely exceed the interest generated by the account; and
  6. Information necessary to determine compliance or justifiable reason for noncompliance with the requirements of paragraph (H) shall be included in the reporting required by paragraph (G) of this rule. If it appears that a lawyer or law firm has not complied where it is feasible to do so, the matter may be referred for appropriate disciplinary investigation and proceedings.
- I. Every lawyer practicing or admitted to practice in this jurisdiction shall be deemed to have consented to the reporting and production requirements mandated by this rule.

**Rule 1.16. Declining or Terminating Representation.**

- A. Except as stated in paragraph (C), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
1. the representation will result in violation of the Rules of Professional Conduct or other law;
  2. the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
  3. the lawyer is discharged.
- B. Except as stated in paragraph (C), a lawyer may withdraw from representing a client if:
1. withdrawal can be accomplished without material adverse effect on the interests of the client;
  2. the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  3. the client has used the lawyer's services to perpetrate a crime or fraud;
  4. the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
  5. the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  6. the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  7. other good cause for withdrawal exists.
- C. A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- D. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

**Rule 1.17. Sale of Law Practice.**

A lawyer or a law firm (or the authorized representative of a lawyer or a law firm) may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

- A. The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in the Choctaw Nation of Oklahoma in which the practice has been conducted; and
- B. The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms, except that:
  - 1. the representation of any client who does not consent as provided in paragraph (C) shall not be transferred;
  - 2. matters shall not be transferred to a purchaser unless the seller has reasonable basis to believe that the purchaser has the requisite knowledge and skill to handle such matters, or reasonable assurances are obtained that such purchaser will either acquire such knowledge and skill or associate with another lawyer having such competence;
  - 3. matters shall not be transferred to a purchaser who would not be permitted to assume such representation by reason of restrictions contained in Rules 1.7 through 1.10 or other Rules; and
  - 4. where matters in litigation are involved, any necessary judicial approvals of the transfer of representation must be obtained.
- C. The seller or the seller's representative shall give written notice to each client whose representation is proposed to be transferred, stating:
  - 1. a sale of the entire practice, or the entire area of practice, is proposed;
  - 2. a transfer of the representation of such client to a specified lawyer, lawyers, or law firm is contemplated;
  - 3. the client has the right to take possession of the file and retain other counsel;
  - 4. the existence and status of any funds or property held for the client, including but not limited to retainers or other prepayments; and
  - 5. the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of the date of the notice.

The signed written consent of each client whose representation is proposed to be transferred to a purchaser must be obtained; provided that the client's consent to the transfer of the client's files shall be presumed if the client does not take any action or does not otherwise object within ninety (90) days of the date of the notice. If a client cannot be given notice, the representation of

that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller must disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of the file.

- D. The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

### **Rule 1.18. Duties to Prospective Client**

- A. A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
- B. Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.
- C. A lawyer subject to paragraph (B) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (D). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (D).
- D. When the lawyer has received disqualifying information as defined in paragraph (C), representation is permissible if:
  - 1. both the affected client and the prospective client have given informed consent, confirmed in writing, or:
  - 2. the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
    - i. the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
    - ii. written notice is promptly given to the prospective client.

## **The Lawyer as Counselor**

### **Rule 2.1. Advisor.**

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

**Rule 2.2. Intermediary.**

- A. A lawyer may act as intermediary between clients if:
  - 1. the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;
  - 2. the lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and
  - 3. the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.
- B. While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.
- C. A lawyer shall withdraw as intermediary if any of the clients so request, or if any of the conditions stated in paragraph (A) above is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

**Rule 2.3. Evaluation for Use by Third Persons.**

- A. A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- B. When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- C. Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

**Rule 2.4. Lawyer Serving As Third-Party Neutral**

- A. A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- B. A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

## **The Lawyer as Advocate**

### **Rule 3.1. Meritorious Claims and Contentions.**

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

### **Rule 3.2. Expediting Litigation.**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

### **Rule 3.3. Candor Toward the Tribunal.**

- A. A lawyer shall not knowingly:
  - 1. make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
  - 2. fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;
  - 3. offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false; or
  - 4. fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.

- B. A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- C. The duties stated in paragraphs (A) and (B) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- D. In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

**Rule 3.4. Fairness to Opposing Party and Counsel.**

A lawyer shall not:

- A. unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- B. falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- C. knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- D. in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- E. in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- F. request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
  - 1. the person is a relative or an employee or other agent of a client; and
  - 2. the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

**Rule 3.5. Impartiality and Decorum of the Tribunal.**

A lawyer shall not:

- A. seek to influence a judge or other official by means prohibited by law;
- B. communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order; or
- C. engage in conduct intended to disrupt a tribunal.

**Rule 3.6. Trial Publicity.**

- A. A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a reasonable lawyer would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have an imminent and materially prejudicial effect on the fact-finding process in an adjudicatory proceeding relating to the matter and involving lay fact-finders or the possibility of incarceration.
- B. Notwithstanding paragraph (A), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.
- C. No lawyer associated in a firm or government agency with a lawyer subject to paragraph (A) shall make a statement prohibited by paragraph (A).

**Rule 3.7. Lawyer as Witness.**

- A. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
  - 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 lawyer would work substantial hardship on the client.
- B. A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

**Rule 3.8. Special Responsibilities of a Prosecutor.**

The prosecutor in a criminal case shall:

- A. refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

- B. make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- C. not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- D. make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- E. not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
  - 1. the information sought is not protected from disclosure by any applicable privilege;
  - 2. the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
  - 3. there is no other feasible alternative to obtain the information;
- F. except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule;
- G. The lawyer upon whom a subpoena is served shall be afforded a reasonable time to file a motion to quash compulsory process of his/her attendance. Whenever a subpoena is issued for a lawyer who then moves to quash it by invoking attorney-client privilege, the prosecutor may not press further in any proceeding for the subpoenaed lawyer's appearance as a witness until an adversary in camera hearing has resulted in a judicial ruling which resolves all the challenges advanced in the lawyer's motion to quash.

### **Rule 3.9. Advocate in Non-adjudicative Proceedings.**

A lawyer representing a client before a legislative body or administrative agency in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3 (A) through (C), 3.4 (A) through (C), and 3.5.

## **Transactions with Persons Other than Clients**

### **Rule 4.1. Truthfulness in Statements to Others.**

In the course of representing a client a lawyer shall not knowingly:

- A. make a false statement of material fact or law to a third person; or
- B. fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

**Rule 4.2. Communication with Person Represented by Counsel.**

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

**Rule 4.3. Dealing with Unrepresented Person.**

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

**Rule 4.4. Respect for Rights of Third Person.**

- A. In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- B. A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

**Law Firms and Associations**

**Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers.**

- A. A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- B. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- C. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

1. the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
2. the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**Rule 5.2. Responsibilities of a Subordinate Lawyer.**

- A. A lawyer is bound by the rules of professional conduct notwithstanding that the lawyer acted at the direction of another person.
- B. A subordinate lawyer does not violate the rules of professional conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

**Rule 5.3. Responsibilities Regarding Non-lawyer Assistants.**

With respect to a non-lawyer employed or retained by or associated with a lawyer:

- A. a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- B. a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- C. a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  1. the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  2. the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**Rule 5.4. Professional Independence of a Lawyer.**

- A. A lawyer or law firm shall not share legal fees with a non-lawyer, except that:
  1. an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

2. a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
  3. 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; and
  4. a lawyer or law firm may include non-lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.
- B. A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law.
- C. A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- D. A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
1. a non-lawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
  2. a non-lawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
  3. a non-lawyer has the right to direct or control the professional judgment of a lawyer.

**Rule 5.5. Unauthorized Practice of Law.**

- A. A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- B. A lawyer who is not admitted to practice in the courts of the Choctaw Nation of Oklahoma shall not:
1. except as authorized by these Rules or other law, establish an office or other systematic and continuous presence for the purpose of practicing law in the courts of the Choctaw Nation of Oklahoma; or
  2. hold out to the public or otherwise represent that the lawyer is admitted to practice law in the courts of the Choctaw Nation of Oklahoma.

- C. Subject to the provisions of 5.5(A), a lawyer admitted in a United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in a jurisdiction where not admitted to practice that:
1. are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
  2. are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
  3. are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or
  4. are not within paragraphs (C)(2) or (C)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- D. A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
1. are provided to the lawyer's employer or its organizational affiliates in connection with the employer's matters, provided the employer does not render legal services to third persons and are not services for which the forum requires *pro hac vice* admission; or
  2. are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

**Rule 5.6. Restrictions on Right to Practice.**

A lawyer shall not participate in offering or making:

- A. a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- B. an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

**Rule 5.7. Responsibilities Regarding Law-Related Services.**

- A. A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (B), if the law-related services are provided:

1. By the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or
  2. In other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.
- B. The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-lawyer.

## **Public Service**

### **Rule 6.1. Pro Bono Public Service.**

A lawyer should render public interest legal service.

A lawyer may discharge this responsibility by:

- A. providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations;
- B. serving without compensation in public interest activities that improve the law, the legal system, or the legal profession; or
- C. financial support for organizations that provide legal services to persons of limited means.

### **Rule 6.2. Accepting Appointments.**

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- A. representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- B. representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- C. the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

### **Rule 6.3. Membership in Legal Services Organization.**

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons

having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- A. if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or
- B. where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

#### **Rule 6.4. Law Reform Activities Affecting Client Interests.**

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially affected by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

#### **Rule 6.5. Nonprofit and Court-Annexed Limited Legal Services Programs**

- A. A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
  - 1. is subject to Rules 1.7 and 1.9(A) only if the lawyer knows that the representation of the client involves a conflict of interest; and
  - 2. is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(A) with respect to the matter.
- B. Except as provided in paragraph (A)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

### **Information About Legal Services**

#### **Rule 7.1. Communications Concerning a Lawyer's Services.**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

#### **Rule 7.2. Advertising.**

- A. Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

- B. A lawyer shall not give anything of value, directly or indirectly, to a person for recommending the lawyer's services except that a lawyer may
1. pay the reasonable costs of advertisements or communications permitted by this Rule;
  2. pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
  3. pay for a law practice in accordance with Rule 1.17; and
  4. without paying anything solely for the referral, refer clients to another lawyer or a non-lawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
    - i. the reciprocal referral agreement is not exclusive, and
    - ii. the client is informed of the existence and nature of the agreement.
- C. Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

**Rule 7.3. Direct Contact With Prospective Clients.**

- A. A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
1. is a lawyer, or
  2. has a family, close personal, or prior professional relationship with the lawyer.
- B. A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (A), if:
1. the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
  2. the solicitation involves coercion, duress or harassment.
- C. Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (A)(1) or (A)(2).

- D. Notwithstanding the prohibitions in paragraph (A), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

**Rule 7.4. Communication of Fields of Practice and Certification.**

- A. A lawyer may, by advertisement or otherwise, communicate the fact that the lawyer does or does not practice in particular fields of law or limits his practice to or concentrates in particular fields of law.
- B. A lawyer shall not state or imply that the lawyer is certified as a specialist in a particular field of law except as follows:
  - 1. a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patent Attorney” or a substantially similar designation;
  - 2. a lawyer engaged in admiralty practice may use the designation “Admiralty,” “Proctor in Admiralty” or a substantially similar designation; and
  - 3. a lawyer who is certified as a specialist in a particular field of law or law practice by the Court of Appeals of the Choctaw Nation may communicate that fact, but only in accordance with the rules prescribed by that Court; and
  - 4. a lawyer who is certified as a specialist in a particular field of law or law practice by the official licensing authority of another state in which the lawyer is licensed may communicate that fact, but only in accordance with all rules and requirements of such state’s licensing authority, and *provided* that the lawyer also communicates that such certification is not recognized by the Court of Appeals of the Choctaw Nation.

**Rule 7.5. Firm Names and Letterheads.**

- A. A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.
- B. A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
- C. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

- D. Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

## **Maintaining the Integrity of the Legal Profession**

### **Rule 8.1. Bar Admission and Disciplinary Matters.**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- A. knowingly make a false statement of material fact; or
- B. fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

### **Rule 8.2. Judicial and Legal Officials.**

- A. A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
- B. A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

### **Rule 8.3. Reporting Professional Misconduct.**

- A. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- B. A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- C. This rule does not require disclosure of information otherwise protected by Rule 1.6.

### **Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

- A. violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

- B. commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;
- C. engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- D. engage in conduct that is prejudicial to the administration of justice;
- E. state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- F. knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

**Rule 8.5. Disciplinary Authority; Choice of Law**

- A. Disciplinary Authority. A lawyer admitted to practice in the courts of the Choctaw Nation is subject to the disciplinary authority of The Court of Appeals of the Choctaw Nation, regardless of where the lawyer’s conduct occurs. A lawyer not admitted to practice in the courts of the Choctaw Nation are also subject to the disciplinary authority of The Court of Appeals of the Choctaw Nation if the lawyer provides or offers to provide any legal service in the Choctaw Nation. A lawyer may be subject to the disciplinary authority of both the Choctaw Nation and another jurisdiction for the same conduct.
- B. Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:
  - 1. for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
  - 2. for any other conduct, the rules of the jurisdiction in which the lawyer’s conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer’s conduct will occur.

**APPENDIX “B”  
CODE OF JUDICIAL CONDUCT**

**Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary.**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

**Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.**

- A. A judge should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private interests of the judge or others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

**Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently.**

- A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In performance of those duties, the following standards apply.
- B. Adjudicative Responsibilities.
  - 1. A judge should be faithful to the law and maintain professional competence in it. A judge should not be swayed by partisan interests, public clamor or fear of criticism.
  - 2. A judge should require order and decorum in proceedings before the judge.
  - 3. A judge should be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom the judge deals in official capacity, and should require similar conduct of lawyers, and of the court staff, court officials and others subject to the judge's direction and control.
  - 4. A judge should perform judicial duties without bias or prejudice. A judge should not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit staff, court officials and others subject to the judge's direction and control to do so.
  - 5. A judge should require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3(B)(5) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.
  - 6. A judge should accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge should not initiate, nor consider ex parte communications, or consider other communications

made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

- i. Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided that the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.
  - ii. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, with a record being made, and affords the parties reasonable opportunity to respond.
  - iii. A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.
  - iv. A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.
7. A judge should dispose of all judicial matters promptly, efficiently and fairly.
8. A judge should not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect the outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial or hearing. The judge should require similar abstention on the part of court personnel subject the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.
9. A judge should not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.
10. Except as permitted by the individual judge, the use of cameras, television or other recording or broadcasting equipment is prohibited in a courtroom or in the immediate vicinity of a courtroom.
- i. Before cameras, television or other recordings or broadcasting equipment are used, express permission of the judge must be obtained.
  - ii. The judge shall prescribe the conditions and specific rules under which such equipment may be used.
  - iii. Media personnel shall not distract participants or impair the dignity of the proceedings.

- iv. No witness or party who expresses any objection to the judge shall be photographed nor shall the testimony of such a witness or party be broadcast, recorded or telecast.
- v. There shall be no photographing or broadcasting of:
  - a) any proceeding which under the laws of this State are required to be held in private; or
  - b) any portion of any criminal proceedings until the issues have been submitted to the jury for determination unless all accused persons who are then on trial shall have affirmatively, on the record, given their consent to the photographing, recording or broadcasting.
- vi. No media representative shall offer, nor shall any party, witness or juror accept, consideration in exchange for consent to telecast, broadcast or photograph the judicial proceeding.

C. Managerial Responsibilities.

- 1. A judge should diligently discharge the judge's managerial responsibilities, without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
- 2. A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
- 3. A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.
- 4. A judge should not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

D. Disciplinary Responsibilities. A judge should report to the appropriate disciplinary authority any unprofessional conduct of a judge or lawyer of which the judge may become aware.

E. Disqualification.

- 1. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

- i. the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - ii. the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;
  - iii. The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or has an interest more than *de minimis* that could be substantially affected by the proceeding;
  - iv. The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;
    - a) is a party to the proceeding, or an officer, director or trustee of a party;
    - b) is acting as a lawyer in the proceeding;
    - c) is known by the judge to have an interest more than *de minimis* that could be substantially affected by the proceeding;
    - d) is to the judge's knowledge likely to be a material witness in the proceeding.
  - v. The Judge has made a public statement that commits, or appears to commit, the judge with respect to an issue in the proceeding or the controversy in the proceeding.
2. A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3(E) may disclose on the record the basis of the judge's disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

**Canon 4. A Judge Should so Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.**

- A. Extra-judicial Activities in General. A judge should conduct all of the judge's extra-judicial activities so that they do not:
  - 1. cast reasonable doubt on the judge's capacity to act impartially as a judge;

2. demean the judicial office; or
  3. interfere with the proper performance of judicial duties.
- B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.
- C. Governmental, Civic or Charitable Activities.
1. A judge may appear at a public hearing before or consult with an executive or legislative body or official on matters concerning the law, the legal system, or the administration of justice.
  2. A judge should not accept appointment to a committee or commission or other governmental position with the Choctaw Nation that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice unless with specific approval of the Court of Appeals of the Choctaw Nation. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.
  3. A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.
    - i. A judge should not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization
      - a) will be engaged in proceedings that would ordinarily come before the judge, or
      - b) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.
    - ii. A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:
      - a) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fundraising activities;

- b) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;
- c) should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4(C)(3)(i)(a), if the membership solicitation is essentially a fundraising mechanism;
- d) should not use or permit the use of the prestige of judicial office for fundraising or membership solicitation.

D. Financial Activities.

1. A judge should not engage in financial and business dealings that:
  - i. may reasonably be perceived to exploit the judge's judicial position, or
  - ii. involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.
2. A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.
3. A judge should not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:
  - i. a business closely held by the judge or members of the judge's family, or
  - ii. a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
4. A judge should manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualifications.
5. A judge should not accept, and should urge members of the judge's family residing in the judge's household, not to accept, a gift, bequest, favor or loan from anyone except for:
  - i. a gift incidental to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an

activity devoted to the improvement of the law, the legal system or the administration of justice;

- ii. a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;
- iii. ordinary social hospitality;
- iv. a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;
- v. a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3(E);
- vi. a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- vii. a scholarship or fellowship award on the same terms and based on the same criteria applied to other applicants; or
- viii. any other gift, bequest, favor or loan, but only if the donor is not a party or other person who has come or is likely to come or whose interests have come or likely to come before the judge; and the judge reports it as may be required by law.

E. Fiduciary Activities.

1. A judge should not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
2. A judge should not serve as fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
3. The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. A judge should not act as an arbitrator or mediator.

G. Practice of Law. A judge shall not practice law in the courts of the Choctaw Nation. Notwithstanding, a judge may, without compensation, give legal advice to and draft or review documents for a member of the judge's family. A judge may appear pro se in a matter in which he is a litigant.

## **Application of the Code of Judicial Conduct**

- A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as an administrative law judge, magistrate, court commissioners, special master or referee, is a judge within the meaning of this Code. All judges should comply with this Code except as provided below.
- B. Continuing Part-time Judge. A continuing part-time judge:
  - 1. is not required to comply:
    - i. except while serving as a judge, with Section 3(B)(9); and
    - ii. at any time with Sections 2(C), 4(C)(2), 4(D)(3), 4(E)(1), 4(F), 4(G), 5(A)(1), 5(B)(2) and 5(D).
  - 2. should not practice law in the court on which the judge serves and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.
- C. Time and Compliance. A person to whom this Code becomes applicable should comply immediately with all provisions of this Code except Sections 4(D)(2), 4(D)(3) and 4(E) and should comply with these Sections as soon as reasonably possible and should do so in any event within the period of one year.

## **Rules Governing Disciplinary Proceedings**

### **RULE 1. Jurisdiction of the Court in the Discipline of Lawyers and the Unauthorized Practice of Law**

#### **Rule 1.1: Declaration of Jurisdiction.**

The Court of Appeals of the Choctaw Nation shall have the exclusive power and authority to discipline attorneys and counselors at law or revoke the permit to practice law granted to attorneys and counselors at law in the courts of the Choctaw Nation of Oklahoma. The Court of Appeals possesses original and exclusive jurisdiction in all matters involving admission of persons to practice law in the courts of the Choctaw Nation of Oklahoma, and to discipline for cause, any and all persons licensed to practice law in the courts of the Choctaw Nation of Oklahoma, hereinafter referred to as lawyers, and any other persons, corporations, partnerships, or any other entities (hereinafter collectively referred to as “persons”) engaged in the unauthorized practice of law.

#### **Rule 1.2: Implied Exceptions Negated.**

The enumeration herein of certain categories of misconduct as grounds for discipline shall not be all-inclusive nor shall the failure to specify any particular act of misconduct be a tolerance thereof by the Court of Appeals.

**Rule 1.3: Discipline for any Act Contrary to the Prescribed Standards of Conduct.**

The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline.

**Rule 1.4: Controversies Regarding Fees.**

- A. All members of the Bar who are required under the Oklahoma Rules of Professional Conduct, Rule 1.15, to maintain a trust account for the deposit of clients' funds entrusted to said attorney, shall do so and furnish evidence thereof as provided for in Rule 1.15. Information received by the Court of Appeals as a result of such inquiry shall remain confidential unless a grievance is filed against a lawyer which, in the opinion of the Court of Appeals, may warrant disciplinary action in regard to the handling of said trust account. Failure of any lawyer to respond giving the information requested will be grounds for appropriate discipline.
- B. Controversies as to the amount of fees shall not be considered a basis for charges in a disciplinary proceeding unless it is made to appear that the amount demanded is extortionate or fraudulent.

**Rule 1.5: Code of Professional Responsibility.**

The Court of Appeals has adopted the Rules of Professional Conduct for Attorneys, which may hereafter be modified by the Court of Appeals, as the standard of professional conduct of all lawyers. Any lawyer violating these Rules of Professional Conduct shall be subject to discipline, as herein provided.

**Rule 1.6: Code of Judicial Conduct.**

The Court of Appeals has adopted the Code of Judicial Conduct as a proper guide and reminder for judges of what the people have a right to expect from them. Complaints against any judge for violating any of the Canons of such Code shall be referred directly to the Chief Judge of the Court of Appeals for such action as the Court may consider appropriate. Complaints against a judge for misconduct unrelated to the performance of his judicial duties shall be forwarded to the Clerk of the Choctaw Nation Court of Appeals for investigation and disciplinary proceedings as herein provided for other lawyers.

**Rule 1.7: Discipline.**

Discipline by the Court of Appeals shall be disbarment, suspension of a respondent from the practice of law for a definite term or until the further order of the Court of Appeals, public censure or private reprimand; the Court of Appeals may, in its discretion, suspend or defer the imposition of discipline subject to the fulfillment of specified conditions by the respondent. In fashioning the degree of discipline to be imposed for misconduct, the Court of Appeals shall

consider prior misconduct where the facts are charged in the complaint and proved and the accused has been afforded an opportunity to rebut such charges.

**Rule 2. Reserved**

**Rule 3. Reserved**

**Rule 4. Reserved**

**Rule 5. Filing and Processing of Grievances and Requests for Investigation.**

**Rule 5.1: Form of Grievances, Requests for Investigations, and Referrals Into a Diversion Program.**

- A. Each grievance or request for investigation (grievances and requests for investigation both being hereinafter referred to as a “grievance) involving a lawyer or involving the unauthorized practice of law, shall be in writing and signed by the person filing the same, except that the Court of Appeals may, in its discretion, appoint a Special Prosecutor to institute an investigation on the basis of facts or allegations involving a lawyer or the unauthorized practice of law brought to their attention in any manner whatsoever. A lawyer or any other person will be immediately notified of the receipt of a grievance and furnished a copy thereof.
- B. In matters involving allegations of the unauthorized practice of law, the Special Prosecutor shall make such investigation as is otherwise provided herein, and may request any involved person who is not a lawyer to make a voluntary response to the allegations of the unauthorized practice of law. The provisions of this Rule requiring a mandatory response to the Special Prosecutor shall not be applicable to non-lawyers.
- C. In a matter involving lesser misconduct, as defined in Rule 5.1(D), prior to the filing of formal charges, the Special Prosecutor may refer the respondent to the diversionary program of a state bar association with the consent of the Court of Appeals. Such program may include, but is not limited to, law office management assistance, Lawyers Helping Lawyers, psychological counseling, continuing legal education programs, and professional responsibility classes. Before referring the respondent to the diversionary program, the Special Prosecutor shall consider the following criteria:
  - 1. the nature of the misconduct alleged,
  - 2. whether the misconduct alleged appears to be an isolated event,
  - 3. whether participation in the diversionary program could benefit the respondent, and
  - 4. whether participation in the diversionary program might jeopardize protection of the public.

- D. Lesser misconduct is misconduct that does not warrant a sanction restricting the respondent's license to practice law. The misconduct alleged shall not be considered lesser misconduct if any of the following considerations apply:
1. the misconduct involved the misappropriation of funds;
  2. the misconduct resulted in or is likely to result in substantial prejudice to a client or other person;
  3. the respondent has been publicly disciplined in the last three years;
  4. the misconduct is of the same nature as misconduct for which the respondent has been disciplined in the last five years;
  5. the misconduct involved dishonesty, deceit, fraud or misrepresentation by the respondent; or
  6. the misconduct constitutes a serious crime (any felony or lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects).
- E. The respondent must agree to waive confidentiality to the extent that a monitor or the Diversionary Program may make disclosures or reports to the Court of Appeals. The respondent must also fulfill any other conditions that the Court of Appeals may impose. Before the respondent is allowed to enter the diversionary program the Court of Appeals and the respondent shall agree on a resolution to the grievance if the respondent is successful in the diversionary program and fulfilling any other conditions imposed by the Court of Appeals.
- F. The respondent has the right to not participate in the diversionary program. In that event, the matter shall proceed as though no offer of referral was extended.
- G. The complaining party will be advised that the respondent has been referred to a diversionary program.
- H. After the respondent has entered the diversionary program the disciplinary matter shall be held in abeyance pending the respondent's successful completion of the program and any other conditions required by the Court of Appeals. Successful completion of the diversionary program and any other conditions imposed by the Court of Appeals shall result in the disposition agreed upon with the Special Prosecutor before the respondent entered the diversionary program.

**Rule 5.2: Filing and Processing of Grievances and Requests for Investigation.**

After making such preliminary investigation as the Special Prosecutor shall deem appropriate either (1) notify the person filing the grievance and the lawyer that the allegations of the grievance are inadequate, incomplete or insufficient to warrant the further attention of the Court of Appeals, or (2) file and serve a copy of the grievance (or, in the case of an investigation

instituted on the part of the Special Prosecutor without the filing of a signed grievance, a recital of the relevant facts or allegations) upon the lawyer, who shall thereafter make a written response which contains a full and fair disclosure of all the facts and circumstances pertaining to the respondent lawyer's alleged misconduct unless the respondent's refusal to do so is predicated upon expressed constitutional grounds. Deliberate misrepresentation in such response shall itself be grounds for discipline. The failure of a lawyer to answer within twenty (20) days after service of the grievance (or recital of facts or allegations), or such further time as may be granted by the Court of Appeals, shall be grounds for discipline. The Court of Appeals shall make such further investigation of the grievance and response as the court may deem appropriate before taking any action.

**Rule 5.3: Initial Action by the Court of Appeals.**

Upon the completion of the investigation, the Special Prosecutor shall either:

- A. Decide that no formal disciplinary proceedings be commenced, in which event the Special Prosecutor shall advise the person filing the grievance that the factual circumstances do not warrant further investigation or disciplinary action;
- B. If, after a disciplinary action has been commenced, the Court of Appeals finds the grievance is wholly frivolous or without merit based upon the investigation of the Special Prosecutor, it shall direct the immediate expungement of any grievance, and upon such expungement, respondent against whom such frivolous grievance has been filed and expungement has been ordered by the Court of Appeals, may treat the grievance as if it was never asserted. Provided, however, that said expungement shall not occur until sixty (60) days after the date of notification to the complainant of that decision;
- C. Send a letter of admonishment to the respondent with the approval of the Court of Appeals;
- D. Decide that no formal proceedings be instituted against the respondent, conditioned upon the respondent's acceptance of a private reprimand, and in such event, the respondent shall be notified to appear before the Court of Appeals at a time and place to be fixed in the notice for the purpose of receiving a private reprimand. If the respondent does not appear at the time and place so fixed in such notice, the Commission may give further consideration to the advisability of filing a formal complaint;
- E. File a formal written complaint with the Court of Appeals within thirty (30) days of the vote of the Court of Appeals unless the court grants an extension of time for reasonable cause; or
- F. In matters involving the unauthorized practice of law, the Special Prosecutor shall either dismiss the grievance or initiate any action permitted by law through the appropriate court.

**Rule 5.4: Grievances Privileged.**

Matters contained in grievances submitted to the Special Prosecutor or the Court of Appeals, and statements, oral or written, with respect thereto, shall be privileged. Litigation or the threat of litigation by a respondent lawyer against a person filing a grievance by reason of such filing may be grounds in itself for discipline.

**Rule 5.5: Continuation of Proceedings notwithstanding Failure to Prosecute, Withdrawal or Settlement of Grievance.**

Neither unwillingness nor neglect of the person filing the grievance to sign a grievance, or to prosecute a charge, nor the settlement or compromise of the dispute between the person filing the grievance and the lawyer, or restitution by the lawyer, shall of itself require abatement of the processing of any grievance, and the termination of such processing shall be at the sole discretion of the Court of Appeals after recommendation by the Special Prosecutor.

**Rule 5.6: Pending Litigation.**

Processing of grievances shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, or administrative proceedings, unless authorized by the Court of Appeals in its discretion, for good cause shown.

**Rule 5.7: Confidentiality of Disciplinary Investigations and Results.**

Investigations by the Special Prosecutor shall be confidential, and the results thereof shall not be made public until authorized by the Court of Appeals or as provided in Rule 6.1. However, when no formal complaint is filed in the Court of Appeals, at the option of the respondent, the final disposition of a grievance may be made public. In all cases the person who filed a grievance and the respondent shall be notified of the final disposition thereof.

**Rule 5.8: Confidentiality of Disciplinary Records.**

The files and records in disciplinary investigations shall be kept private and confidential except that the Court of Appeals shall be permitted to provide relevant information contained in such files and records to the following:

- A. Any court or bar association or committee thereof, including State, Tribal or Federal, of any jurisdiction which exercises disciplinary authority over attorneys.
- B. Any grievance committee of the Association or any grievance committee of any state or county bar association (whether in or outside Oklahoma) which is investigating or has investigated a complaint against the lawyer, or whose investigation of another lawyer necessitates such information.
- C. Any law enforcement agency which makes a proper showing that such information is necessary to the conduct of a pending investigation, with notice to the lawyer.

**Rule 5.9: Proceedings which are to be a Matter of Public Record.**

All proceedings brought under the provisions of Rules 6, 7, 8 and 11 of these Rules shall be filed with the Clerk of the Court of Appeals and be a matter of public record at all times, except as limited by Rule 5.7.

## **Rule 6. Formal Proceedings before the Court of Appeals**

### **Rule 6.1. Manner of Instituting.**

Formal proceedings in matters involving misconduct by lawyers shall be conducted by the Court of Appeals.

The proceeding shall be initiated by a formal complaint prepared by the Special Prosecutor and filed with the Clerk of the Choctaw Nation Court of Appeals. Upon the expiration of the respondent's time to answer, the complaint and the answer, if any, shall thereupon be lodged with the Clerk of the Choctaw Nation Court of Appeals and the complaint, as well as all further filings and proceedings with respect thereto, shall be a matter of public record. Three (3) copies shall be filed with each original instrument.

### **Rule 6.2. Contents of the Formal Complaint.**

The complaint shall set forth the specific facts constituting the alleged misconduct, and if prior conduct resulting in discipline, or evidence from prior investigations, is relied upon to enhance discipline, the prior acts or conduct relied upon shall be set forth.

### **Rule 6.2A. Emergency Interim Suspension Orders and Related Relief.**

#### **A. Verified Complaint and Service.**

The Special Prosecutor, upon receipt of sufficient evidence demonstrating that a lawyer subject to these Rules has committed conduct in violation of the Rules of Professional Conduct, or is personally incapable of practicing law as set forth in Rule 10 hereof, and where such conduct poses an immediate threat of substantial and irreparable public harm, may file a verified complaint in accordance with Rule 6 hereof requesting interim suspension and other appropriate relief. A copy of the complaint shall be served personally or by certified mail, return receipt requested, upon the respondent by the Special Prosecutor; provided that, if a respondent refuses to sign for, or otherwise does not claim the certified mail, then the Special Prosecutor may serve the complaint and any further papers, notices and orders in accordance with Rule 12.1 hereof.

#### **B. Immediate Interim Suspension.**

1. Upon filing of the verified complaint, the Court may issue an order directing the respondent to object and show cause within ten (10) days why such order of interim suspension should not be entered.
2. In the event such an objection is timely filed, the matter shall be set for hearing at the earliest possible time. Such hearing shall be before the Court of Appeals.

### C. Related Relief.

1. Any order of interim suspension may include such other orders to the respondent as may be necessary to preserve and recover funds and other property of respondent's clients or other persons, and the Court of Appeals may, upon its own motion issue an order appointing counsel and authorizing said counsel to initiate civil proceedings in the appropriate court to obtain an order to preserve any such funds maintained in a financial institution or elsewhere.
2. In the event that the respondent does not file an objection to the order as set forth in Rule 6.2A(B) above, or in the event that such an objection is timely filed, but, after hearing on the matter, the order is entered, and the Court may, upon its own motion:
  - i. require the respondent to give written notices to affected clients and otherwise comply with Rule 9.1 hereof within ten (10) days of the hearing or, where no timely objection to the order was filed, within ten (10) days of the expiration of the time for filing such an objection; and/or
  - ii. issue an order requiring the appointment of an attorney(s) to wind up the respondent's business in accordance with Rule 9.3 hereof.

### D. Further Proceedings-Accelerated.

Disposition. In addition to the above, the respondent shall file an answer to the complaint with the Clerk of the Choctaw Nation Court of Appeals pursuant to Rule 6.4, and, except as provided above, all proceedings thereafter shall be conducted in accordance with the Rules Governing Disciplinary Proceedings where no interim suspension is sought; provided that, the respondent may include in his/her answer a request for accelerated disposition, and, thereafter, the entire proceedings shall be concluded by the Court of Appeals without appreciable delay.

#### **Rule 6.3. Notification of Filing of Complaint.**

At the direction of the Chief Judge of the Court of Appeals, the Clerk shall immediately notify the respondent of the filing of a formal complaint. Such notification shall include a copy of the complaint and shall be by regular mail, except that the notice to the respondent shall be sent by certified mail to the respondent's last known address.

#### **Rule 6.4. Response to Complaint.**

The respondent shall within twenty (20) days after the mailing of the complaint file an answer with the Clerk of the Choctaw Nation Court of Appeals. The respondent may not challenge the complaint by demurrer or motion. In the event the respondent fails to answer, the charges shall be deemed admitted, except that evidence shall be submitted for the purpose of determining the discipline to be imposed.

#### **Rule 6.5. Amendment of Complaint.**

After the complaint has been filed, the Special Prosecutor may amend the complaint to add or delete allegations as permitted under the general rules of civil procedure, subject to the respondent's right to file an answer within twenty (20) days after such amendment.

**Rule 6.6. Reserved.**

**Rule 6.7. Setting and Notification of Hearing.**

The Court of Appeals shall notify the respondent of the time and place for the hearing, which shall not be less than thirty (30) nor more than sixty (60) days from the date of filing the answer to the complaint. Extensions of this period may be granted by the Court of Appeals for good cause shown.

**Rule 6.8. Depositions and Discovery.**

- A. Depositions may be taken and read, and documents and things may be required to be produced for inspection and/or copying, in the same manner as in civil cases;
- B. Upon written request made fifteen (15) days before the trial of the cause, the respondent or his attorney shall be given the names and addresses of witnesses to be used by the prosecution; and
- C. The Special Prosecutor shall have the authority to enter into stipulations of fact and law concerning a formal complaint against a respondent lawyer.

**Rule 6.9. Hearing Open to the Public.**

Formal proceedings before the Court of Appeals in disciplinary proceedings shall be open to the public.

**Rule 6.10. Record of Proceedings.**

Formal proceedings before the Court of Appeals shall be stenographically recorded and transcribed unless the facts are stipulated.

**Rule 6.11. Power of the Court of Appeals in the Conduct of Proceedings.**

- A. The Court of Appeals shall have the power and authority to: Administer oaths and affirmations and hear evidence, and compel, by subpoena, the attendance of witnesses and the production of books, records, papers, documents or other tangible evidence, either for deposition or for trial; witnesses shall be paid, upon demand, mileage and witness fees as provided by the law in civil cases.
- B. Oaths or affirmations may be administered, and subpoenas may be issued, by the Court of Appeals, or by any officer authorized by law to administer an oath or issue subpoenas.
- C. Whenever any person (except the respondent in a case where his answer may not be compelled under Rule 6.11(D) below) subpoenaed or ordered to appear by the Court of

Appeals to give testimony, or to produce books, records, papers, documents or other tangible evidence, fails to comply, or whenever any person (except the respondent pursuant to Rule 6.11(D) below), present at a hearing, refuses to testify or to answer any proper question or to obey any proper order, the Court of Appeals may enforce compliance with its directions or orders as hereinafter provided. It may take such steps as are necessary to maintain order in its sessions.

- D. The respondent may be called as a witness either by the prosecution or on his own behalf, and when called upon to give testimony, the respondent may not decline to answer any relevant question unless he personally states that his answer thereto might disclose matters that are privileged or that would tend to incriminate him or show him to be guilty of any act or offense that would be grounds for discipline.

**Rule 6.12. Evidence, Procedure and Standard of Proof.**

- A. So far as practicable, the disciplinary proceedings and the reception of evidence shall be governed generally by the rules in civil proceedings, except as otherwise herein provided; the respondent shall be entitled to be represented by counsel.
- B. On a charge of solicitation of professional employment through a lay person or agency, it shall not be necessary to prove that such lay person or agency received compensation.
- C. To warrant a finding against the respondent in a contested case, the charge or charges must be established by clear and convincing evidence, and at least two of the judges of the Court of Appeals must concur in the findings.

**Rule 6.13. Reserved.**

**Rule 6.14. Reserved.**

**Rule 6.15. Decision by the Court of Appeals.**

- A. Within thirty (30) days of the disciplinary proceedings, the Special Prosecutor shall file with the Clerk of the Choctaw Nation Court of Appeals a written report containing the findings of fact on all pertinent issues and conclusions of law (including a recommendation as to discipline, if such is found to be indicated, and a recommendation as to whether the costs of the investigation, record and proceedings should be imposed on the respondent) Thereafter, the Court of Appeals shall may approve the Special Prosecutor's finding of fact and conclusions of law or make its own independent findings, impose discipline, dismiss the proceedings or take such other action as it deems appropriate. The Court of Appeals shall also decide whether the costs of the investigation, record and proceedings should be imposed on the respondent. The thirty (30) day period referred to above may be extended by the Court of Appeals, for good cause shown.
- B. Notice of the action or decision of the Court of Appeals shall be given by the Clerk to the respondent and to the Special Prosecutor.

- C. Petitions for rehearing on behalf of the respondent or the Special Prosecutor shall be filed with the Clerk of the Choctaw Nation Court of Appeals within twenty (20) days from the date of mailing of the action or decision of the Court of Appeals.

**Rule 6.16. Cost of Investigations and Disciplinary proceedings Where Discipline Results.**

The costs of investigation, the record, and disciplinary proceedings shall be advanced by the Court of Appeals. Where discipline results, the cost of the investigation, the record, and disciplinary proceedings shall be surcharged against the disciplined lawyer unless remitted in whole or in part by the Court of Appeals for good cause shown. Failure of the disciplined lawyer to pay such costs within ninety (90) days after the order of the Court of Appeals becomes effective shall result in automatic suspension from the practice of law until further order of the Court.

**Rule 7. Summary Disciplinary Proceedings Before the Court of Appeals.**

**Rule 7.1. Criminal Conviction of a Lawyer.**

A lawyer who has been convicted or has tendered a plea of guilty or nolo contendere pursuant to a deferred sentence plea agreement in any jurisdiction of a crime which demonstrates such lawyer's unfitness to practice law, regardless of whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial, shall be subject to discipline as herein provided, regardless of the pendency of an appeal.

**Rule 7.2. Reserved.**

**Rule 7.3. Interim Suspension from Practice.**

Upon receipt of certified copies of a Judgment and Sentence on a plea of guilty or nolo contendere, order deferring judgment and sentence, indictment or information and the judgment and sentence, the Court of Appeals shall by order immediately suspend the lawyer from the practice of law until further order of the Court. In its order of suspension the Court shall direct the lawyer to appear at a time certain, to show cause, if any the lawyer has, why the order of suspension should be set aside. Upon good cause shown, the Court may set aside its order of suspension when it appears to be in the interest of justice to do so, due regard being had to maintaining the integrity of and confidence in the profession.

**Rule 7.4. Conviction Becoming Final without Appeal.**

If the conviction becomes final without appeal, the Court shall order the lawyer, within such time as the Court shall fix in the order, to show cause in writing why a final order of discipline should not be made. The written return of the lawyer shall be verified and expressly state whether a hearing is desired. The lawyer may in the interest of explaining the lawyer's conduct or by way of mitigating the discipline to be imposed upon the lawyer, submit a brief and/or any evidence tending to mitigate the severity of discipline.

**Rule 7.5. Appeal of Conviction.**

If an appeal is perfected from the judgment of conviction and such judgment is reversed, the disciplinary proceedings based upon such conviction shall be dismissed immediately. If the judgment of conviction is affirmed on appeal, or the judgment is affirmed as modified and the lawyer remains convicted of a crime which demonstrates a lawyer's unfitness to practice law, the same procedure for making final disposition of the matter shall apply as provided in Rule 7.4.

**Rule 7.6. Disciplinary Proceedings Based Upon Same Facts as Criminal Proceeding.**

Nothing contained herein shall prevent the Court of Appeals from initiating and conducting disciplinary proceedings upon charges identical to those set forth in a criminal complaint, indictment, or information, notwithstanding the pendency or final disposition of the criminal action. In such event, certified or authenticated copies of the record and transcripts of testimony and evidence from the criminal action will be admissible in the disciplinary proceeding whether for or against the lawyer.

**Rule 7.7. Disciplinary Action in Other Jurisdictions, as Basis for Discipline.**

- A. It is the duty of a lawyer licensed in the Choctaw Nation of Oklahoma to notify the Clerk of the Choctaw Nation Court of Appeals whenever discipline for lawyer misconduct has been imposed upon him/her in another jurisdiction, within twenty (20) days of the final order of discipline, and failure to report shall itself be grounds for discipline.
- B. When a lawyer has been adjudged guilty of misconduct in a disciplinary proceeding, except contempt proceedings, by the highest court of a State, Tribal or by a Federal Court, the Clerk of the Choctaw Nation Court of Appeals shall cause to be transmitted to the judges of the Court of Appeals a certified copy of such adjudication and the Court shall direct the lawyer to appear before the Court of Appeals at a time certain, not less than ten (10) days after mailing of notice, and show cause, if any he/she has, why he/she should not be disciplined. The documents shall constitute the charge and shall be prima facie evidence the lawyer committed the acts therein described. The lawyer may submit a certified copy of transcript of the evidence taken in the trial tribunal of the other jurisdiction to support his/her claim that the finding therein was not supported by the evidence or that it does not furnish sufficient grounds for discipline. The lawyer may also submit, in the interest of explaining his/her conduct or by way of mitigating the discipline which may be imposed upon him/her, a brief and/or any evidence tending to mitigate the severity of discipline. The Court of Appeals may appoint a Special Prosecutor to prosecute the alleged misconduct. The Special Prosecutor may respond by submission of a brief and/or any evidence supporting a recommendation of discipline.

**Rule 7.8. Reserved.**

**Rule 7.9. Reserved.**

**Rule 7.10. Reserved.**

**Rule 8. Resignation Pending Disciplinary Proceedings.**

**Rule 8.1. Prerequisites for Resignation.**

A lawyer who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may resign membership in the Bar of the Choctaw Nation of Oklahoma, and thereby relinquish the right to practice law, only by delivering to the Clerk of the Choctaw Nation Court of Appeals an affidavit stating that the lawyer desires to resign and that:

- A. The resignation is freely and voluntarily rendered, the lawyer is not being subjected to coercion or duress, and the lawyer is fully aware of the consequences of submitting the resignation;
- B. The lawyer is aware that there is presently pending an investigation into, or proceedings involving, allegations that there exist grounds for discipline, specifying particularly the misconduct alleged;
- C. The lawyer agrees that he may be reinstated only upon full compliance with the conditions and procedures prescribed by these Rules, and no application for reinstatement may be filed prior to the lapse of five years from the effective date of the resignation.

### **Rule 8.2. Order Approving; Reinstatement.**

Upon receipt of the required affidavit, the Court of Appeals may enter an order approving the resignation pending disciplinary proceedings. A lawyer who so resigns shall only be permitted to apply for reinstatement after the lapse of five (5) years and under the provisions of Rule 11.

### **Rule 9. Procedure Following Disciplinary Action by the Court of Appeals and Notice thereof; Winding up of Business of Deceased, Disciplined or missing Lawyer.**

#### **Rule 9.1. Notice to Clients; List of other Bars to which Admitted.**

When the action of the Court of Appeals becomes final, a lawyer who is disbarred or suspended, or who has resigned membership pending disciplinary proceedings, must notify all of the lawyer's clients having legal business then pending within twenty (20) days, by certified mail, of the lawyer's inability to represent them and the necessity for promptly retaining new counsel. If such lawyer is a member of, or associated with, a law firm or a professional corporation, such notice shall be given to all clients of the firm or professional corporation, which have legal business then pending with respect to which the disbarred, suspended or resigned lawyer had substantial responsibility. The lawyer shall also file a formal withdrawal as counsel in all cases pending in any tribunal. The lawyer must file, within twenty (20) days, an affidavit with the Clerk of the Choctaw Nation Court of Appeals stating that the lawyer has complied with the provisions of this Rule, together with a list of the clients so notified and a list of all other State, Tribal and Federal courts and administrative agencies before which the lawyer is admitted to practice. Proof of substantial compliance by the lawyer with this Rule 9.1 shall be a condition precedent to any petition for reinstatement.

#### **Rule 9.2. Notice to Other Jurisdictions.**

The Clerk of the Choctaw Nation Court of Appeals shall thereafter cause notice of discipline to be given to the Oklahoma Bar Association and the Oklahoma Supreme Court, all federal courts in Oklahoma; to the United States Court of Appeals for the Tenth Circuit; to the American Bar

Association; to the National Conference of Bar Examiners and the National Discipline Data Bank; and to any other State, Tribal, or Federal courts or administrative agency before which the lawyer is admitted to practice.

**Rule 9.3. Appointment of Attorneys to Wind Up the Lawyer’s Business.**

Whenever a lawyer disappears or dies while his professional conduct is under investigation by the Court of Appeals, or it appears that a disbarred or suspended lawyer is unable or unwilling to arrange for the winding up of his legal business, the Court of Appeals shall determine whether a partner, executor or other appropriate representative of the lawyer is available to notify and protect the interests of the lawyer’s clients, and, if none is available, the Court of Appeals shall appoint one or more members of the bar to inventory the files of the lawyer and propose to the Court necessary or appropriate action to protect the interests of the clients of the lawyer and the lawyer himself/herself, and to take such action in that regard as the Court shall direct. The attorney-client relationship shall be deemed to extend to all such attorneys so appointed. Said attorneys may take physical possession of the lawyer’s files and may turn them over to the clients, subject to the Court’s approval. A record shall be maintained of all facts in said files pertaining to the lawyer’s right to fees. While carrying out the functions hereinabove described, the attorneys shall be considered as agents of the Court, and shall not be liable to any person for their actions taken in good faith.

**Rule 10. Suspension for Personal Incapacity to Practice Law.**

**Rule 10.1. Definition.**

The term “personally incapable of practicing law” shall include:

- A. Suffering from mental or physical illness of such character as to render the person afflicted incapable of managing himself, his affairs or the affairs of others with the integrity and competence requisite for the proper practice of law;
- B. Active misfeasance or repeated neglect of duty in respect to the affairs of a client, whether in matters pending before a tribunal or in other matters constituting the practice of law; or
- C. Habitual use of alcoholic beverages or liquids of any alcoholic content, hallucinogens, sedatives, drugs, or other mentally or physically disabling substances of any character whatsoever to any extent which impairs or tends to impair ability to conduct efficiently and properly the affairs undertaken for a client in the practice of law.

**Rule 10.2. Suspension.**

Whenever it has been determined that a lawyer is personally incapable of practicing law, his license to practice shall be suspended until reinstated by order of this Court.

**Rule 10.3. Procedure in General.**

- A. Proceedings to determine whether a lawyer is personally incapable of practicing law shall be instituted and conducted in the same manner and upon the same procedure as disciplinary proceedings, except as otherwise set out in these Rules.
- B. In addition to, and without exclusion of, any other circumstances, cause to believe that a lawyer may be personally incapable of practicing law, justifying referral to the Court of Appeals, shall exist whenever information is received that such lawyer
  - 1. has interposed successfully a defense of mental incompetence to secure abatement of, or to defeat an adverse determination in, disciplinary proceedings brought against him in any tribunal in any jurisdiction;
  - 2. has defended, upon like grounds, a suit brought against him in any tribunal in any jurisdiction;
  - 3. has been judicially declared incompetent; or
  - 4. has been legally committed, otherwise than voluntarily, to an institution for the treatment of mental illness.

**Rule 10.4. Inquiry as to Personal Incapacity to Practice Law, Incidental to Disciplinary Proceedings.**

Whenever in a disciplinary proceeding brought under these rules, the respondent interposes present mental incompetence as a ground for abating the proceeding, the Court of Appeals shall determine whether the respondent is mentally incapable to defend or to assist his counsel in defending against the charges. If the Court finds that the respondent is mentally incapable so to defend or to assist in defending, but that the condition is temporary, the lawyer shall be suspended from the practice of law on the ground of such personal incapacity. When the cessation of such condition is made known to the Court of Appeals and the Court shall proceed with the disciplinary proceeding. If the Court finds that the respondent's mental incapability is permanent or probably permanent, it shall proceed as if the respondent specifically had been alleged to be personally incapable of practicing law.

**Rule 10.5. Joinder of Disciplinary Charges with Charges of Personal Incapacity to Practice Law.**

Whenever a proceeding charging that a lawyer is personally incapable of practicing law is based upon conduct or neglect of duty in respect to the affairs of a client, the complaint must also allege specifically any such conduct which would justify the imposition of discipline, so that the Court of Appeals may hear evidence thereon to determine whether the lawyer should be disciplined or whether he/she should be found personally incapable of practicing law.

**Rule 10.6. Representation by Counsel.**

In proceedings under this Rule, respondents shall be entitled to representation by counsel. A respondent who has been judicially declared mentally incompetent, or who has been judicially committed to an institution for the treatment of the mentally ill, shall be defended by his legally

appointed guardian or guardian ad litem, if any; in default thereof, the Chief Judge of the Court of Appeals shall appoint a guardian ad litem. The same procedure shall apply to a respondent who has asserted his incompetence or whose incompetence to defend becomes apparent during the proceedings. In all cases, counsel previously selected by the respondent will be appointed guardian ad litem, absent clear and compelling reasons.

**Rule 10.7. Service of Process or Notice.**

Service of process on or notices to a respondent who has been committed or declared incompetent shall be accomplished as required by civil procedure or by Order of the Court of Appeals. After appointment of a guardian ad litem, notices will be served upon him/her.

**Rule 10.8. Proof by Certified Copies.**

A certified copy of a court order declaring a respondent mentally incompetent, or an order of commitment, if he has been committed to an institution for the care of the mentally incompetent, shall constitute sufficient evidence that he is personally incapable of practicing law, if not successfully rebutted.

**Rule 10.9. Examination by Physicians.**

In any proceeding where mental incompetency is an issue, the respondent may be required to submit to a mental examination by one or more physicians selected by the Court of Appeals or by a guardian ad litem, after his/her appointment. Reports of physicians regarding the mental condition of a respondent may be received as probative evidence, if the physicians are available for cross-examination or if cross-examination is waived.

**Rule 10.10. Proceedings in the Court of Appeals.**

A report shall be made by the Court of Appeals for the proceedings just as in disciplinary actions and filed with the Clerk of the Choctaw Nation Court of Appeals. If the Court finds the respondent personally incapable of practicing law, he shall be formally suspended from the practice of law until further order of the Court.

**Rule 10.11. Application for Reinstatement.**

- A. Procedures for reinstatement of a lawyer suspended because of personal incapacity to practice law shall be, insofar as applicable, the same as the procedures for reinstatement provided in Rule 11 following suspension upon disciplinary grounds. The petition shall be filed with the Clerk of the Choctaw Nation Court of Appeals and the petitioner will be required to supply such supporting proof of personal capacity as may be necessary. In addition, the petitioner may be required to submit to examinations by physicians selected by the Court of Appeals. After the matter is submitted to the Court, additional testimony and proof may be required to determine whether the petitioner should be reinstated.
- B. After the hearing has been completed, the Court of Appeals shall determine whether to reinstate the respondent and may decide any other questions of fact bearing upon the pertinent issues.

- C. The actual cost of the proceedings for suspension and for reinstatement shall be assessed against the respondent or petitioner unless remitted by the Court of Appeals on the ground of hardship.

**Rule 10.12. Confidentiality.**

Except where disciplinary proceedings are involved (Rule 10.4), all proceedings under this Rule 10 shall remain confidential and shall not be a matter of public record, unless otherwise ordered by the Court of Appeals. A separate, non-public docket and files shall be maintained for this purpose, under the supervision of the Clerk of the Choctaw Nation Court of Appeals.

**Rule 11. Reinstatement.**

**Rule 11.1. Petition for Reinstatement.**

A person whose name has been stricken from the Roll of Attorneys for non-payment of dues, or who has been suspended from the practice of law for a period of longer than two (2) years or disbarred, or who has resigned membership in the Bar Association, may be readmitted to the practice of law only through the following procedures:

- A. The applicant shall file an original and four (4) copies of a petition for reinstatement with the Clerk of the Choctaw Nation Court of Appeals, and attach thereto
  - 1. an affidavit showing all of the applicant's activities since the termination or suspension of his right to practice law and the applicant's place or places of residence since that date; and
  - 2. the applicant's affidavit and the affidavits of the court clerks in the several counties in which he has resided, establishing that the applicant has not practiced law in their respective courts since the termination or suspension of his right to practice law.
- B. The applicant shall pay a fee to cover the expenses of investigating and processing the application as determined by the Court of Appeals. In addition, the applicant shall pay the cost of the original and one copy of the transcript of any hearings held in connection with the application.
- C. The applicant shall, if required by the Court of Appeals, procure at the applicant's expense and cause to be filed any report required by the Court of the applicant's activities during any time after termination or suspension that the applicant has resided outside the state.
- D. The applicant shall not be permitted to file an application for reinstatement, after disbarment or resignation pending investigation or disciplinary proceedings, within five (5) years of the effective date of the order of the Court disbarring the applicant or accepting the resignation, nor shall any applicant be permitted to file an application for reinstatement within one (1) year after the Court of Appeals has denied an earlier application.

### **Rule 11.2. Investigation by the Court of Appeals or Special Prosecutor.**

The Court of Appeals shall conduct an investigation on all applications for reinstatement or may appoint a Special Prosecutor for that purpose.

### **Rule 11.3. Reinstatement Hearing.**

The application for reinstatement shall be heard by the Court of Appeals:

- A. The hearing shall be held not less than sixty (60) days nor more than ninety (90) days after the petition has been filed.
- B. The Court of Appeals shall cause notice of the hearing to be given to the applicant and to be published in a newspaper of general circulation in the county of the residence of the applicant and, if it be different, also in the county of the applicant's residence at the time of the applicant's suspension, disbarment or resignation. The notice shall advise interested persons when and where the hearing will be conducted.
- C. At least ten (10) days before the hearing, the Applicant shall furnish to the Clerk of the Choctaw Nation Court of Appeals the names and addresses of all witnesses who will be called to testify before the Court of Appeals as to his good moral character. Affidavits will not be considered.
- D. Discovery may be had, and the procedure, authority and powers of the Court of Appeals shall be the same as those provided in Rule 6.
- E. The hearing shall be conducted as an adversary proceeding and a Special Prosecutor shall be responsible for cross-examination of the applicant's witnesses and presenting, where deemed advisable, testimony of witnesses in opposition to the applicant's reinstatement.

### **Rule 11.4. Standard of Proof for Petitions for Reinstatement.**

An applicant for reinstatement must establish affirmatively that, if readmitted or if the suspension from practice is removed, the applicant's conduct will conform to the high standards required of a member of the Bar. The severity of the original offense and the circumstances surrounding it shall be considered in evaluating an application for reinstatement. The burden of proof, by clear and convincing evidence, in all such reinstatement proceedings shall be on the applicant. An applicant seeking such reinstatement will be required to present stronger proof of qualifications than one seeking admission for the first time. The proof presented must be sufficient to overcome the former judgment of the Court of Appeals that was adverse to the applicant. Feelings of sympathy toward the applicant must be disregarded. If applicable, restitution, or the lack thereof, by the applicant to an injured party will be taken into consideration by the Court of Appeals on an application for reinstatement. Further, if applicable, the Court of Appeals shall satisfy itself that the applicant complied with Rule 9.1 of these Rules.

### **Rule 11.5. Findings Prerequisite to Reinstatement.**

At the conclusion of the hearing held on the petition for reinstatement, the Court of Appeals shall file a report with the Clerk of the Choctaw Nation Court of Appeals, together with the transcript of the hearing. Said report shall contain specific findings upon each of the following:

- A. Whether or not the applicant possesses the good moral character which would entitle him to be admitted to the Bar Association of the Choctaw Nation;
- B. Whether or not the applicant has engaged in any unauthorized practice of law during the period of suspension, disbarment or resignation;
- C. Whether or not the applicant possesses the competency and learning in the law required for admission to practice law in the highest court of any state.

**Rule 11.6. Decision by the Court of Appeals.**

After the filing of the report, together with the petition for reinstatement, the transcript of the hearing and all exhibits offered thereat, with the Clerk of the Choctaw Nation Court of Appeals, the Court may request that briefs be filed. Thereafter, the Court will take such action as it deems appropriate on the petition, based upon the record and the report.

**Rule 11.7. Notice of Decision and Petition for Rehearing.**

Notice of the action taken by the Court of Appeals on the petition shall be given to the applicant and the Special Prosecutor. Either party may file with the Clerk of the Choctaw Nation Court of Appeals a petition for rehearing within twenty (20) days after the Court issues its decision.

**Rule 11.8. Reinstatement without Order after Suspensions of Two (2) Years or Less.**

A lawyer who has been suspended for two (2) years or less upon disciplinary charges may resume practice upon the expiration of the period of suspension by filing with the Clerk of the Choctaw Nation Court of Appeals an original and four (4) copies of an affidavit affirming that affiant has not engaged in the unauthorized practice of law or otherwise violated the Rules of Professional Conduct or the terms of the affiant's order of suspension. The affidavit shall also describe all business or professional activities of the affiant and places of residence during the term of the suspension. No order of the Court is necessary; however, material deletions or misrepresentations in the affidavit shall be grounds for subsequent discipline.

**Rule 12. Reserved.**

**Rule 13. Service.**

**Rule 13.1. Manner of Service.**

Service of any and all correspondence, notices, and any formal complaint, in connection with proceedings under these Rules, whether before or after the filing of a formal complaint, may be made upon the respondent lawyer or applicant for reinstatement in person or by mail directed to the respondent or applicant at the last address shown on the official roster of the Bar Association of the Choctaw Nation of Oklahoma, unless and until the respondent or applicant, or counsel for

the respondent or applicant, shall cause to be delivered to the Clerk of the Choctaw Nation Court of Appeals or the Special Prosecutor a notice reflecting a different address. Bar Association members are required to provide a current address to the clerk and to inform the clerk of any changes in address. Proof of mailing to the respondent or applicant at such address shall be sufficient to prove service. Except as otherwise specifically provided in these Rules, service may be made by regular mail.

**Rule 14. Reserved.**

**Rule 15. Immunity.**

**Rule 15.1. Immunity for Official Acts.**

The Special Prosecutor and all witnesses, in acting in connection with the enforcement of these Rules, and all others (whether or not members of the Choctaw Nation Bar Association) whose assistance is requested by any of the foregoing in connection with the enforcement of these Rules, shall be considered as acting officially on behalf of the Court of Appeals of the Choctaw Nation, and shall enjoy immunity from civil liability to the fullest extent recognized by federal, state and tribal law.