

**BAY MILLS INDIAN COMMUNITY  
TRIBAL COURT**

On order of the Court, pursuant to its authority under sec. 105 of the Tribal Code of the Bay Mills Indian Community, the following Rule of the Bay Mills Indian Community Tribal Court is adopted and promulgated.

**Rule 105.2    CODE OF ETHICAL CONDUCT FOR JUDGES; COURT PERSONNEL;  
LAWYERS AND LAY ADVOCATES**

**2.001    Purpose.** The purpose of this Code is to provide for and guide the professional conduct of judges, court clerks, magistrates and administrators of this Court as well as lawyers and lay advocates who practice before this Court.

**2.002    Definitions.** When used in this Code, unless the content otherwise indicates:

- (A) "Attorney or Lawyer" means an individual who is a current member of the State Bar of Michigan or some other state. The term "attorney" is synonymous with the term "lawyer." Further, a lawyer must be admitted to practice before this Court pursuant to Bay Mills Community Tribal Code Section 306.
- (B) "Court" or "Tribal Court" means the Bay Mills Indian Community Tribal Court.
- (C) "Tribe" means the Bay Mills Indian Community.
- (D) "Lay Advocate" means a person who is a non-lawyer and who has been recognized by this Court to serve as an advocate on behalf of a party.
- (E) "Court Personnel" means any personnel employed with the Court including but not limited to the following: judge, clerk or court administrator.

**2.101    Judicial Conduct.** This Code applies to anyone, whether or not a lawyer, who is an officer of the tribal judicial system and is performing judicial functions. Also, this Code applies to both trial and appellate tribal judges, who serve the Court on a full-time, part-time or pro tempore basis.

**2.102    Integrity and Independence of Tribal Judiciary.** A tribal court judge should uphold the integrity and independence of the tribal judiciary in that an independent and honorable tribal judiciary is indispensable to justice in the tribal community. A judge should participate in establishing, maintaining, and enforcing, and should himself or herself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant(s) and the public, not the judiciary. The provisions of this Code (Section 2.101 through 2.110, inclusive) should be construed and applied to further these objectives.

2.103 **Impropriety and the Appearance of Impropriety.** A tribal court judge should avoid all impropriety and the appearance of impropriety in all his/her activities. In addition, a tribal judge:

- (A) Should respect and comply with the law and tradition of the Tribe and at all times should act in a manner that promotes public confidence in the integrity and impartiality of the tribal judiciary;
- (B) Should not allow family, social or other relationships to influence his/her judicial conduct. S/he should not attempt to use the prestige of his/her office to advance the private interests of himself/herself or others, nor should s/he convey the impression that anyone has special influence on the judge; and
- (C) Should not appear as a witness in a court proceeding unless subpoenaed.

2.104 **Performance of Duties Impartially and Diligently.** A tribal court judge should perform the duties of the office impartially and diligently. The judicial activities of a tribal judge should take precedence over all other activities. The judicial duties of the judge include all the duties of the office as prescribed by tribal law, custom or tradition. In the performance of these duties, the following standards apply:

- (A) Adjudicative Responsibilities:
  - (1) A tribal court judge should adhere to the laws, customs and traditions of the Tribe. S/he should be unswayed by partisan interests, public clamor, political pressure, or fear of criticism, and should resist influences on the Court by other tribal officials, governmental officials or any others attempting to improperly influence the Court.
  - (2) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, lay advocates and others with whom s/he deals in his/her official capacity and should require similar conduct of other persons in court proceedings and those court personnel who are subject to the judge's direction and control.
  - (3) A tribal court judge should accord to every person who is legally interested in any proceeding, or his/her lawyer or other representative, full right to be heard according to tribal law and tradition, and except as authorized by law, neither consider nor permit ex parte or other communication with a litigant or his/her attorney or lay advocate concerning a pending or impending proceeding unless all parties to the proceeding are present.

- (4) A tribal court judge should maintain order in the Court. S/he should not interfere in the proceedings except where necessary to protect the rights of the parties.
- (5) A tribal court judge should dispose promptly of the business of the Court.
- (6) A tribal court judge should not comment publicly on any pending Court proceeding and should also prohibit other court personnel from making such public comment. However, this subsection does not prohibit a judge from making public statements in the course of his/her official duties or from explaining for public information the procedures of the Court.

(B) Administrative Responsibilities:

- (1) A judge should diligently perform his/her administrative responsibilities with a high degree of integrity and diligence.
- (2) A judge should require his/her staff and court officials to observe high standards of integrity and diligence. As such, a judge should direct his/her staff and court officials subject to his/her control to observe high standards of fidelity, diligence and courtesy to litigants, jurors, witnesses, lawyers, lay advocates and others with whom they deal in their official capacity.
- (3) A judge should initiate appropriate disciplinary measures against a judge, lawyer, lay advocate, or court personnel for non-professional conduct of which the judge may become aware.

**2.105 Improvement of the Legal System and the Administration of Justice.** A tribal court judge may engage in activities to improve the law, the legal system and the administration of justice; in fact, to the extent that his/her time permits, s/he is encouraged to do so, either independently or through a legal/judicial association, judicial conference, or other organization dedicated to the improvement of the law. Therefore, a judge, subject to the proper performance of his/her judicial duties, may engage in the following activities:

- (A) The judge may speak, write, lecture, teach and participate in other activities concerning tribal law and custom, the legal system of the Tribe, the administration of justice, and the law in general;
- (B) The judge may appear at a public hearing before a tribal executive or legislative body or official on matters concerning the tribal legal system and the administration of justice of general concern to tribal members, or of personal concern. When speaking to the public, press, or others on matters other than the

administration of tribal justice, the judge shall not identify himself/herself as the tribal judge and shall make it clear that s/he is not speaking in his/her capacity as tribal judge; and

- (C) The judge may serve as a member, officer, or director of an organization or tribal governmental agency devoted to the improvement of tribal law, its legal system or the administration of justice. The judge may assist such an organization in raising funds and may participate in the management and investment of such funds. S/he may make recommendations to public and private fund-granting agencies on projects and programs concerning tribal law, its legal system and the administration of justice.

## **2.106     Extra-Judicial Activities.**

- (A) Avocational Activities: A tribal judge may write, lecture, teach, speak, and consult on non-legal subjects, appear before public non-legal bodies, and engage in the arts, sports, and other social and recreational activities, provided such avocational activities do not detract from the dignity of his/her office or interfere with the performance of his/her judicial duties.
- (B) Civic and Charitable Activities: A tribal judge may participate in civic and charitable activities that do not reflect adversely upon his/her impartiality or interfere with the performance of his/her judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization, whether tribal or otherwise, provided that a tribal judge does not participate if it is likely that the organization will be involved in proceedings which would ordinarily come before him/her or would be involved in adversarial proceedings in any tribal court.
- (C) Financial Activities:
  - (1) A tribal judge should avoid financial and business dealings that tend to reflect adversely on his/her judicial duties, exploit his/her judicial position, or involve him/her in frequent business transactions with lawyers or others likely to come before the Court on which s/he serves.
  - (2) Because it is recognized that the position of tribal judge may be a part-time position, such a tribal judge may accept other employment and participate in the operation of a business, legal or otherwise in nature, subject to the following:
    - (a) A part-time tribal judge should not practice law either as a lawyer or an advocate:
      - (i) in the tribal court in which he or she serves; or

- (ii) in any court subject to the appellate jurisdiction of the tribal court or council on which he or she serves; and
- (b) A part-time tribal judge should not act as a lawyer or advocate in any proceeding in which he or she has judicially served or in any related proceeding.
- (3) Neither a judge nor a member of his/her family residing in his/her household should accept a gift, bequest, favor, or loan from anyone if the same would affect or appear to affect his/her impartiality.

**2.107 Political Activities.**

- (A) A tribal court judge should refrain from political activity inappropriate to his/her judicial office. However, a judge or candidate for judicial office may attend political gatherings; speak to such gatherings on his/her own behalf or on behalf of other judicial candidates; and/or contribute to a political party.
- (B) A tribal judge shall not be a candidate for or serve on the Tribal Council, nor shall a tribal judge be actively involved in the campaign of another for Tribal Council.
- (C) A candidate, including an incumbent judge, for a tribal judicial office that is filled by tribal election or appointment:
  - (1) Should maintain the dignity appropriate to the judicial office and should refrain from any political activity which might interfere with the performance of his/her judicial duties. Further, a tribal court judge should encourage members of his/her family to adhere to the same standards of political conduct that apply to him/her; and/or
  - (2) Should not make pledges or promises of conduct in judicial office other than the faithful and impartial performance of the duties of the office, nor announce his/her views on disputed legal or political issues.

**2.108 Continuing Educational Activities.** A judge, regardless of their education and experiences prior to being appointed or elected a judge, should seek further legal and pertinent non-legal education designed to improve their performance as a judge.

**2.201 Applicability of this Code of Conduct for Court Personnel.** This Code applies to court clerks, court magistrates, court administrators or other similar court personnel who are employed within a tribal judicial system, whether such employment is on a full-time, part-time or pro tempore basis.

**2.202 Integrity and Independence of Court Personnel.** Court personnel should uphold the integrity and independence of the judiciary and of the court personnel's office in that an independent and honorable judiciary is indispensable to justice in the tribal community. Therefore, court personnel should observe and impart to other court personnel high standards of conduct so that the integrity and the independence of the judiciary may be preserved and so that the court personnel's office may reflect a devotion to serving the public. The provisions of this Code (Sections 2.201 through 2.206, inclusive) should be construed and applied to further these objectives. The standards of this section shall not affect or preclude other standards which may be promulgated by the Court.

**2.203 Impropriety and the Appearance of Impropriety.** Court personnel should not engage in any activity which would put into question the propriety of conduct in carrying out the duties of the office, including but not limited to the following:

- (A) Court personnel shall not allow family, social, or other relationships to influence official conduct or judgment. Court personnel shall not lend the prestige of their office to advance the interests of himself/herself or others, nor should court personnel convey, or others be permitted to convey, the impression that they are in a special position to influence the court personnel;
- (B) Court personnel, as well as family member(s) who reside in the same household as the court personnel, should not accept a gift, bequest, favor, or loan from any person whose interests have come, or are likely to come, before said court personnel or from any other person under circumstances which might reasonably be regarded as influencing the performances of the duties of the office;
- (C) Court personnel should abstain from public comment about pending or impending Court proceedings and should require similar abstention on the part of other court personnel. Court personnel should never disclose to any person any confidential information received in the course of official business, nor should such information be employed for personal gain;
- (D) Court personnel should avoid favoritism, unfairness, or nepotism in connection with the hiring, discharge, or treatment of subordinate court staff;
- (E) Court personnel should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the Court in a biased manner, which improperly favors any litigant or attorney or other representative, nor imply that such court personnel is in a position to do so; and/or
- (F) Court personnel should not practice law.

**2.204**     **Performance of Duties Impartially and Diligently.** The official duties of court personnel take precedence over all activities. The official duties include all the duties of the court personnel's respective office as prescribed by law or by order of the tribal court. In the performance of these duties, the following standards apply:

- (A) Court personnel should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the tribal judiciary and the respective court personnel's office; and
- (B) Court personnel should be faithful to the highest standard of the profession and maintain professional competence in it. Also, court personnel should be patient, dignified, courteous, and fair to all persons whom s/he has contact with in an official capacity such as litigants, jurors, witnesses, lawyers, lay advocates and others, and should require similar conduct from subordinate staff and others subject to his/her direction and control.

**2.205**     **Improvement of the Legal System and the Administration of Justice.** Court personnel, subject to the proper performance of official duties, may engage in the following quasi-official activities:

- (A) Court personnel may speak, write, lecture, teach and participate in other activities concerning court management, the legal system, and the administration of justice; and
- (B) Court personnel may promote the development of professional organizations and foster the interchange of technical information and experience with others in the profession. Court personnel should be available to the public-at-large for speaking engagements and public appearances designed to enhance the public's knowledge of the operation of the tribal court system.

**2.206**     **Continuing Educational Activities.** Court personnel, regardless of their education and experience prior to being appointed or elected as court personnel, should seek further legal and pertinent non-legal education designed to improve their performance as court personnel.

**2.301**     **Applicability of this Code of Ethics for Lawyers and Lay Advocates.** This Code shall apply to all persons, whether licensed attorneys or lay advocates, who are admitted to practice before the Court. It is recognized that attorneys who are admitted to practice before the Court are also members of the State Bar of Michigan or some other State and are therefore subject to discipline under the appropriate State ethical rules. This Code is not intended to preempt or supersede any State authority to discipline attorneys for any conduct prohibited by this Code (Sections 2.301-2.305)

**2.302**     **Purpose.** This Code is adopted both as an inspirational guide to the persons practicing before the Tribal Court and as a basis for disciplinary action when the conduct of a person falls below the required minimum standards stated in the rules set forth below.

**2.303** **Client - Lawyer Relationship.** The following provisions apply to the client-lawyer relationship:

(A) Competence. A lawyer shall provide competent representation to a client. A lawyer shall not:

- (1) Handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it;
- (2) Handle a legal matter without preparation adequate in the circumstances; or
- (3) Neglect a legal matter entrusted to the lawyer.

(B) Scope of Representation.

- (1) A lawyer shall seek the lawful objectives of a client through reasonably available means permitted by law and this Code. A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to accept an offer of settlement or mediation evaluation of 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 a jury trial, and whether the client will testify. In representing a client, a lawyer may, where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.
- (2) A lawyer may limit the objectives of the representation if the client consents after consultation.
- (3) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal 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.
- (4) When a lawyer knows that a client expects assistance not permitted by this Code or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.



(C) Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

(D) Communication.

- (1) A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, mediation evaluations, and proposed plea bargains.
- (2) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(E) Confidentiality of Information.

- (1) "Confidence" refers to information protected by the client-lawyer privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.
- (2) Except when permitted under paragraph (3) below, a lawyer shall not knowingly:
  - (a) reveal a confidence or secret of a client;
  - (b) use a confidence or secret of a client to the disadvantage of the client; or
  - (c) use a confidence or secret of a client to the disadvantage of the lawyer or of a third person, unless the client consents after full disclosure.
- (3) A lawyer may reveal:
  - (a) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them;
  - (b) confidences or secrets when permitted or required by these rules, or when required by law or by court order;
  - (c) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used;

- (d) the intention of a client to commit a crime and the information necessary to prevent the crime; and
  - (e) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.
- (4) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by Subparagraph (E) (3) above through an employee.

(F) Conflict of Interest: General Rule.

- (1) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
  - (a) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
  - (b) each client consents after consultation.
- (2) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest unless:
  - (a) the lawyer reasonably believes the representation will not be adversely affected; and
  - (b) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(G) Client Under a Disability.

- (1) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority or mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (2) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer

reasonably believes that the client cannot adequately act in the client's own interest.

(H) Declining or Terminating Representation.

- (1) Except as stated in Subparagraph (3) below, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
  - (a) the representation will result in violation of this Code of Ethics or other law;
  - (b) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
  - (c) the lawyer is discharged.
- (2) Except as stated in Subparagraph (3) below, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:
  - (a) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  - (b) the client has used the lawyer's services to perpetrate a crime or fraud;
  - (c) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
  - (d) 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;
  - (e) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  - (f) other good cause for withdrawal exists.
- (3) When ordered to do so by this Court, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

- (4) Upon termination of representation, a lawyer should take reasonable steps 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 that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by law.

**2.304**     **Advocate.** The following provisions shall apply when a lawyer serves in the role of advocate:

- (A) **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. A lawyer may offer 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 so defend the proceeding as to require that every element of the case be established.
- (B) **Expediting Litigation.** A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.
- (C) **Candor Toward the Tribunal.**
  - (1) A lawyer shall not knowingly:
    - (a) make a false statement of material fact or law to this Court;
    - (b) fail to disclose a material fact to this Court when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
    - (c) fail to disclose to this Court controlling legal authority in the jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
    - (d) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.
  - (2) The duties stated in subparagraph (C) (1) above continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Subparagraph 2.303(F).
  - (3) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

- (4) In an ex parte proceeding, a lawyer shall inform this Court of all material facts that are known to the lawyer and that will enable this Court to make an informed decision, whether or not the facts are adverse.

(D) Fairness to Opposing Party and Counsel. A lawyer shall not:

- (1) unlawfully obstruct another party's access to evidence; unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value; or counsel or assist another person to do any such act;
- (2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (3) knowingly disobey an obligation under the rules of this Court except for an open refusal based on an assertion that no valid obligation exists;
- (4) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party;
- (5) during 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
- (6) request a person other than a client to refrain from voluntarily giving relevant information to another party, unless:
  - (a) the person is a relative or an employee or other agent of a client; and
  - (b) the lawyer reasonably believes that the person's interest will not be adversely affected by refraining from giving such information.

(E) Impartiality and Decorum of the Tribunal. A lawyer shall not:

- (1) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;
- (2) communicate ex parte with such a person concerning a pending matter, except as permitted by law; or
- (3) engage in undignified or discourteous conduct toward the tribunal.

- (F) Trial Publicity. A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have substantial likelihood of materially prejudicing an adjudicative proceeding.
- (G) Lawyer as Witness.
  - (1) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:
    - (a) the testimony relates to an uncontested issue;
    - (b) the testimony relates to the nature and value of legal services rendered in the case; or
    - (c) disqualification of the lawyer would work substantial hardship on the client.
  - (2) 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 Subparagraphs 2.304(G).

**2.305 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 as permitted by the Indian Civil Rights Act [25 U.S.C. Section 1302];
- (C) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights;
- (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 degree of the offense, and, in connection with sentencing, disclose to the defense and to this Court all underprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of this Court; and
- (E) 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 Subparagraph 2.305(F) or 2.305(H).

- (F) Trial publicity. A tribal prosecutor participating in or associated with the investigation of a criminal matter may not make or participate in making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:
- (1) Information contained in a public record;
  - (2) That the investigation is in progress;
  - (3) The general scope of the investigation including a description of the offense, and if permitted by law, the identity of the victim;
  - (4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary to the request for assistance; or
  - (5) A warning to the public of any dangers.
- (G) Restrictions.
- (1) No tribal prosecutor may receive any fee or reward from or on behalf of any victim or other individual for services in any prosecution or business which it is the tribal prosecutor's official duty to attend.
  - (2) No tribal prosecutor may be concerned as attorney or counsel for either party, other than the Tribe, in any civil action depending upon the same state of facts upon which any prosecution commenced by the prosecutor is based.
  - (3) No tribal prosecutor while in office is eligible for or may hold any judicial office.
  - (4) No person who acted a tribal prosecutor at the time of the citation issuance, arrest, or bringing of charges against any person by the Tribe may thereafter appear for or defend that person against the charges.
- (H) Refraining from Criticism. Tribal prosecutors shall refrain from public and private criticism of other officers of the Court except as set out in these rules as being their responsibility. Tribal prosecutors shall not engage in discussions whose sole purpose or main thrust shall be the criticism of any officers of the Court, i.e., judges, lay advocates, attorneys, or law enforcement officers, in public or in private, except that constructive criticism designed to improve the performance of the individual may be given in a kind manner. Said constructive criticism should only be delivered in a forum conducive to the purpose of the constructive criticism.

- (I) Independent Decision-Making. Tribal prosecutors have a duty to not be frightened or dissuaded from making difficult or unpopular decisions. Tribal prosecutors have a responsibility to study the applicable law and factors. They must not be influenced in making these decisions by the fear of their being unpopular politically or from the threat of community or personal reprisal. They must not be influenced by threatening community or family anger. Their decisions should never be reactive to non-admissible influences, rather they should act based on their opinion as formed by the applicable facts and law of each case.
- (J) Political Activities.
- (1) The political activity of a tribal prosecutor shall be consistent with the support of the community's jurisdictional rights. Tribal prosecutors will refrain from all political activities or actions which could be interpreted in the community as supporting any political position except that the tribal community has the right and the responsibility to govern its own members and its own territory. All actions should be consistent with this belief and supportive of this community standard.
  - (2) This prohibition does not mean that tribal prosecutors cannot, if they choose, engage in activities of electoral politics at the local, state, national or tribal level. This prohibition is specific as to politics adversely affecting the jurisdictional rights of the tribal community.
- (K) Avocational and Financial Activities.
- (1) Avocational. A tribal prosecutor may write, lecture, teach and speak on any subject, and engage in the arts, sports, and other social and recreational activities of the Tribe, if those activities do not interfere with the performance of his or her duties. A tribal prosecutor may participate on tribal committees and in any tribal educational, religious, charitable or similar organization.
  - (2) Financial.
    - (a) A tribal prosecutor shall avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her prosecutorial duties, exploit the prosecutor's position, or involve him or her in frequent transactions with lawyers and others likely to be involved in the opposing side in tribal court cases. The tribal prosecutor may, however, hold other employment or participate in the operation of a business.



- (b) Neither the tribal prosecutor nor any member of his or her family or household shall accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his or her impartiality in prosecutorial duties, or on the prosecutor's appearance of fairness.
- (L) Disqualification. A tribal prosecutor shall disqualify himself or herself from acting as prosecutor in any proceeding in which his or her impartiality might reasonably be questioned, including instances where:
  - (1) The tribal prosecutor has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;
  - (2) The tribal prosecutor served as lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the tribal prosecutor has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;
  - (3) The tribal prosecutor knows that he or she individually or a member of his or her family or household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or
  - (4) The tribal prosecutor, or a member of his or her family or household:
    - (a) is a party to the proceeding, or an officer, director, or trustee of a party;
    - (b) is acting as a lawyer or lay advocate in the proceeding; or
    - (c) is to the tribal prosecutor's knowledge likely to be a material witness in the proceeding.

**2.401     Enforcement of Ethical Codes: Definitions**

- (A) "Complainant" means the person who files the request for investigation.
- (B) "Investigation" means fact-finding on alleged misconduct.
- (C) "Respondent" means an attorney, lay advocate, judge or other court personnel named in the request for investigation or complaint.
- (D) "Request for Investigation" means a written complaint against the conduct of a person subject to this Rule.

- 2.402 **Jurisdiction over Complaints against Judges.** Any request for investigation concerning a judge shall be referred to the Executive Council for consideration of removal proceedings under sec. 104(C) of the Tribal code.
- 2.403 **Jurisdiction over Complaints against Court Personnel.** Any request for investigation concerning a person employed by the Tribe to fill a position covered by this Code shall be referred to the person's appropriate supervisor for action under the Tribe's Personnel Policies and Procedures.
- 2.404 **Jurisdiction over Complaints against Attorneys and Lay Advocates.** Any request for investigation concerning an attorney or lay advocate admitted to practice in the Bay Mills Indian Community Tribal Court shall be referred to the Chief Judge of the Tribal Court. The Chief Judge may conduct the investigation, or assign the matter to an Associate Judge.
- 2.405 **Contents of Request for Investigation.** A request for investigation must be in writing, describe the alleged misconduct, including the approximate time and place of it, and be signed and dated by the complainant. The complainant shall file two (2) copies, one of which shall be furnished to the respondent.
- 2.406 **Review of Investigation Request by the Court.** The Court shall conduct an in camera review of the request for investigation, and shall determine whether the request specifies facts which, if proved, would constitute a violation of this Code. If the Court determines that no violation is apparent from the facts alleged, the complainant shall be informed that the matter is dismissed. If the Court determines that a violation may have occurred, it shall direct that the respondent be provided a copy of the request and set the matter for hearing.
- 2.407 **Hearing by Tribal Court.** An evidentiary hearing concerning the alleged misconduct shall be conducted under the provisions of Chapters III and IV of the Tribal Code. Both complainant and respondent may appear in person, present testimony of witnesses, produce documents, and make argument. At the conclusion of the hearing, the Court shall issue a written decision within 30 days.
- 2.408 **Disposition of Complaint.** The Court shall include in its decision one of the following:
- (A) Dismissal of the complaint on the grounds that no misconduct was proven to have occurred.
  - (B) Determination of misconduct having been proven, and imposition of one of the following penalties:
    - (1) Admonish respondent;

- (2) Issue a reprimand;
- (3) Place respondent on probation for a specific period of time;
- (4) Revoke respondent's authorization to practice before the Tribal Court; or
- (5) Require respondent, when applicable, to make restitution in an appropriate amount.

Dated this 16<sup>th</sup> day of DECEMBER, 2003.

BY THE COURT:

  
CORRINE A. CAMERON, Chief Judge