

Fort Peck Tribal Court
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Appendix 5 – Code of Ethics for Attorneys and Lay Counselors

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Canon 1. Competence.

An attorney shall provide competent representation to a client. Competent legal representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. As employed in this Code, the term "attorney" includes lay counselors.

Canon 2. Scope of Representation.

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

Canon 3. Diligence.

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

Canon 4. Communication.

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

Canon 5. Fees.

(1) An attorney's fees shall be reasonable. The determination of reasonable fees should include the following consideration:

- (a) The experience and ability of the attorney providing the legal services;
- (b) The time and skill involved in performing the service; and
- (c) The fee customarily charged on the Fort Peck Reservation and surrounding communities for similar services.

(2) A fee may be contingent on the outcome of the representation. A contingent fee agreement should however, be in writing and state the method by which it shall be calculated. An attorney

shall not enter into a fee arrangement contingent upon securing a divorce or upon the amount of support or property settlement thereof. Neither shall an attorney enter into a contingent fee arrangement for the representation of a defendant in a criminal case.

(3) Representation should not be denied people because they are unable to pay for legal services. The legal profession encourages provision of legal services at no fee or at a substantially reduced fee in these circumstances.

Canon 6. Confidentiality of Information.

An attorney shall not reveal information communicated by a client. However, an attorney may reveal information to the extent that attorney reasonably believes necessary to prevent a client from committing a criminal act likely to result in death or serious bodily harm. An attorney may also reveal information necessary to allegations in any proceedings concerning the attorney's representation of a client. An attorney, lay counselor, prosecutor or public defender shall not discuss any case, open or closed, with any member of the Fort Peck legislative or executive branches of government, except when a discussion is solicited by the legislative or executive branches of government. Attempts to discuss or discussion with said individuals shall result in sanctions, including disbarment, by the Fort Peck Tribal Court.

(AMENDED AS PER RESOLUTION NO. 26-1602-2012-11; DATED 11/14/2012.)

Canon 7. Conflict of Interest.

(1) An attorney should not represent a client if that representation will be adverse to the interests of another client, or if the attorney's own interests conflict with those of a client, unless:

(a) The attorney reasonably believes the representation will not adversely affect his or her ability to represent each client fully and competently; and

(b) Each client consents after disclosure and consultation. Examples of conflict of interest between clients include: representing opposing parties in litigation, representing more than one de-

fendant in a criminal case, and representing a client against a party who is a client in another case, even if the two cases are unrelated. Examples of conflicts of interest between a lawyer and client include: entering into any business transaction with a client, and acquiring any financial interest adverse to the client.

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

(3) An attorney shall not represent a client in a matter in which that attorney served as a judge or arbitrator without the consent of all parties to the proceeding.

Canon 8. Client under Disability.

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

Canon 9. Safekeeping Property.

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

Canon 10. Declining or Terminating Representation.

(1) An attorney shall terminate representation if a client requests that the attorney engage in illegal or fraudulent conduct or conduct that violates the Fort Peck Code of Ethics.

(2) An attorney may withdraw from representing a client if withdrawal can be accomplished without adversely affecting the client's interests, or if:

(a) The client fails substantially to meet an obligation to the attorney regarding the attorney's services and the client has been notified that the attorney will withdraw if the obligation is not met;

(b) The representation will result in an unreasonable financial burden on the attorney or has been made unreasonably difficult by the client; or

(c) Other good cause for withdrawal exists. When the attorney is representing the client in a Court matter, withdrawal can only be accomplished upon motion to the Court. When ordered by a court of the Fort Peck Reservation to continue representation, an attorney shall do so despite good cause for terminating the representation. If termination of representation is granted, an attorney shall take reasonable steps to protect the client's interests. Such steps include giving reasonable notice and time to appoint new counsel, and surrendering papers and property to which the client is entitled.

Canon 11. Advice and Meritorious Claims.

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

Canon 12. Expediting Litigation.

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

Canon 13. Honesty toward The Fort Peck Courts.

An attorney shall act with honesty toward the Fort Peck Courts. An attorney shall not knowingly make false statements to the Courts or knowingly offer false evidence. Nor shall an attorney fail to disclose significant legal authority directly adverse to his or her client's position.

Canon 14. Fairness to Opposing Party.

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

(a) Destroy or conceal evidence, including documents or other materials of possible evidentiary value;

(b) Falsify existing evidence or create new evidence; or

(c) Influence a witness to give false or misleading testimony.

Canon 15. Impartiality and Decorum of The Fort Peck Courts.

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

Canon 16. Conduct Before The Fort Peck Courts.

An attorney shall act with respect and courtesy toward the Fort Peck Courts. This requires that an attorney comply with rules established by the Court for courtroom demeanor and procedure.

Canon 17. Attorney as Witness.

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

(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 attorney would substantially burden the client.

Canon 18. Special Responsibilities of a Prosecutor.

Tribal prosecutors shall uphold their special responsibilities. It is a tribal prosecutor's duty to ensure that a defendant in a criminal case is accorded justice as prescribed by the criminal procedure of the Fort Peck Code of Justice. In order to carry out this responsibility a tribal prosecutor shall:

(a) Not prosecute a charge the prosecutor knows is not supported by probable cause;

(b) Make efforts to ensure that the accused has the opportunity to obtain counsel;

(c) Not attempt to obtain waivers of important pre-trial rights from an unrepresented accused;

(d) Disclose to the defense all evidence and information known to the prosecutor tending to negate and mitigate the guilt of the accused;

(e) Exercise care to prevent other persons associated with the prosecutor in a criminal case from talking publicly about the case prior to trial.

Canon 19. Communication with Person Represented By Counsel.

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

Canon 20. Communications Concerning an Attorney's Services.

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

Canon 21. Soliciting Clients.

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

(APPROVED BY THE FORT PECK TRIBAL EXECUTIVE BOARD PER RESOLUTION NO.2982- 87-8, DATED 08/10/87.)

Canon 22. Rule of Court for Handling Complaints against Attorneys and Lay Advocates.

(1) The initial complaint must be written and submitted to the Tribal Court Administrator.

The Tribal Court Administrator will review the complaint and request that the complaining party submit an affidavit to support the complaint.

(2) The Tribal Court Administrator will forward the complaint to the respondent attorney/lay advocate and request a response within 10 working days.

(3) The Tribal Court Administrator will forward the written complaint, affidavit and response to the Tribal attorney for review.

(4) The Tribal attorney will investigate the complaint. If the Tribal attorney decides that the allegations lack probable cause, the complaint will be dismissed. If the Tribal attorney decides that there is probable cause, a hearing will be set. The Tribal attorney or his designee within the prosecutor's office, as long as there is no conflict between the parties, will prosecute the complaint, with all parties present, at a hearing before the Chief Judge.

(5) If the Chief Judge initiated the complaint, the judge with the most seniority as a tribal court judge will preside at the hearing.

(6) If the complaint is filed against the Tribal attorney, the Chief Prosecutor will investigate the complaint to determine if probable cause exists. If probable cause exists, the Chief Prosecutor or her designee will prosecute the complaint.

(7) A final decision by the Chief Judge can be appealed to the Fort Peck Court of Appeals.

(AS PER RESOLUTION NOS. 25-2176-2011-05; DATED 05/23/2011; 27-1631-2015-03, DATED 3/9/2015.)