

Chapter 11
Pokagon Band of Potawatomi Indians
Court Rules of Professional Conduct for Attorneys

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Chapter 11
Pokagon Band of Potawatomi Indians
Court Rules of Professional Conduct for Attorneys

Section 1. Title. This Chapter is known as the *Court Rules of Professional Conduct for Attorneys*.

Section 2. Purpose and Definitions.

- A. **Purpose.** The purpose of this Chapter is to ensure and guide the professional conduct of attorneys admitted to practice before the courts of the Pokagon Band. It is recognized that attorneys who are admitted to practice before the courts of the Pokagon Band must also be members of the State Bar of Michigan or some other state and therefore may also be subject to discipline under the appropriate state ethical rules. These *Rules* are not intended to preempt or supersede any state authority to discipline attorneys for any conduct prohibited by these *Rules*.
- B. **Definitions.** The following definitions apply to the *Court Rules of Professional Conduct for Attorneys*:
1. "*Attorney*" means an individual who is admitted to practice before the courts of any state and is admitted to practice before the Pokagon Band Tribal courts.
 2. "*Band*" and "*Tribe*" are synonymous and mean the Pokagon Band of Potawatomi Indians.
 3. "*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, traditions and customs.
 4. "*Confidence*" refers to information protected by the client-attorney privilege under applicable law or court rule, 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.
 5. "*Consult*" or "*consultation*" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.
 6. "*Court*" and "*Tribal Court*" are synonymous and mean the trial level court of the Pokagon Band of Potawatomi Indians.

7. "*Court of Appeals*" means the appellate level court of the Pokagon Band of Potawatomi Indians.
8. "*Court Personnel*" means any personnel employed with the Court including, but not limited to, the following: clerk, magistrate, or court administrator.
9. "*Firm*" or "*law firm*" denotes an attorney or attorneys in a private firm, attorneys employed in the legal department of a corporation or other organization, and attorneys employed in a legal services organization.
10. "*Fraud*" or "*fraudulent*" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or the failure to apprise another of relevant information.
11. "*Knowingly*", "*known*" or "*knows*" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.
12. "*Partner*" denotes a member of a partnership and/or a shareholder in a law firm organized as a professional corporation.
13. "*Person*" includes a corporation, an association, a trust, a partnership or any other organization or legal entity.
14. "*Reasonable*" or "*reasonably*" when used in relation to conduct by an attorney, denotes the conduct of a reasonably prudent and competent attorney.
15. "*Reasonable belief*" or "*reasonably believes*" when used in reference to an attorney, denotes that the attorney believes the matter in question and that the circumstances are such that the belief is reasonable.
16. "*Reasonably should know*" when used in reference to an attorney, denotes that an attorney of reasonable prudence and competence would ascertain the matter in question.
17. "*Substantial*" when used in reference to degree or extent, denotes a material matter of clear and weighty importance.
18. "*Tribal Council*" means the governing body of the Tribe.
19. "*Tribal courts*" means both the trial level court and appellate level court of the Pokagon Band of Potawatomi Indians.

Section 3. Admission to Practice. In order to practice before the Tribal courts, an individual must:

- A. be admitted to practice before the courts of any state;
- B. be in good standing with all the bars to which the individual is admitted to practice;
- C. have completed the Pokagon Band Tribal Court *Application for Admission to Practice* and the *Oath of Admission*; and
- D. have been duly admitted by the Pokagon Band Tribal Court.

Section 4. Client-Attorney Relationship.

A. **Competence.** An attorney shall provide competent representation to a client. An attorney shall not:

- 1. handle a legal matter which the attorney knows or should know that the attorney is not competent to handle, without associating with an attorney 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 attorney.

B. **Scope of Representation.**

- 1. An attorney shall abide by a client's decisions concerning the objectives of representation, subject to subsections (3), (4) and (5) as stated below and shall consult with the client as to the means by which they are to be pursued. Attorneys shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, an attorney shall abide by the client's decision, after consultation, as to a plea to be entered, whether to request a jury trial and whether the client will testify.
- 2. Representation of a client, including representation by appointment, does not constitute an endorsement of the client's beliefs, political, economic, social or moral views or activities.
- 3. An attorney may limit the objectives of the representation if the client consents after consultation.
- 4. An attorney shall not assist or counsel a client to engage in conduct that the attorney knows is criminal or fraudulent, but an attorney may discuss

the legal consequences or 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.

5. When an attorney knows that a client expects assistance not permitted by these *Rules* or other law, the attorney shall consult with the client regarding the relevant limitations on the attorney's conduct.

C. Diligence. Attorneys shall act with reasonable diligence and promptness in representing a client.

D. Communication.

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

E. Fees.

1. An attorney shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, an attorney of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:
 - a. time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - b. likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney;
 - c. a fee customarily charged in the locality for similar legal services;
 - d. amount involved and the results obtained;
 - e. time limitations imposed by the client or by the circumstances;
 - f. nature and length of the professional relationship with the client;

- g. experience, reputation, and ability of the attorney or attorneys performing the services; and
 - h. whether the fee is fixed or contingent.
- 2. When the attorney has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing before or within a reasonable time after commencing the representation.
- 3. 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 subsection (4) below or by other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. Upon conclusion of a contingent fee matter, the attorney shall provide the client with a written statement of the outcome of the matter and, if there is a recovery, show the remittance to the client and the method of its determination.
- 4. An attorney shall not enter into an arrangement for, charge, or collect a contingent fee in a domestic relations matter or in a criminal matter.
- 5. A division of a fee between attorneys who are not in the same firm may be made only if the:
 - a. client is advised of and does not object to the participation of all attorneys involved; and
 - b. total fee is reasonable.

F. Confidentiality of Information.

- 1. Except when permitted under subsection (2) below, an attorney 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 advantage of the attorney or of a third person, unless the client consents after full disclosure.
- 2. An attorney may reveal a confidence or secret relating to the representation of a client:

- a. to prevent reasonably certain death or substantial bodily harm;
 - b. to prevent the client from committing a crime or 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;
 - c. with the consent of the client or clients affected, but only after full disclosure to them;
 - d. when permitted or required by these *Rules*, or when required by law or by court order;
 - e. to the extent reasonably necessary to prevent, mitigate, or rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the attorney's services have been used; or
 - f. 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.
3. An attorney shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the attorney from disclosing or using confidences or secrets of a client, except that an attorney may reveal the information allowed by Section 4(F)(2) above through an employee.

G. Conflict of Interest: General Rule.

1. An attorney shall not represent a client if the representation of that client will be directly adverse to another client, unless:
 - a. the attorney reasonably believes the representation will not adversely affect the relationship with the other client; and
 - b. each client consents after consultation.
2. An attorney shall not represent a client if the representation of that client may be materially limited by the attorney's responsibilities to another client or to a third person, or by the attorney's own interest unless the:
 - a. attorney reasonably believes the representation will not be adversely affected; and

- b. 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.

H. Conflict of Interest: Prohibited Transactions.

1. An attorney 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 the:
 - a. transaction and terms on which the attorney 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;
 - b. client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
 - c. client consents in writing.
2. An attorney shall not use information relating to the representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Section 4(F)(2) or Section 6(C)(1).
3. An attorney shall not prepare an instrument giving the attorney or a person related to the attorney as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.
4. Prior to the conclusion of representation of a client, an attorney shall not make or negotiate an agreement giving the attorney literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
5. An attorney shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that an attorney:
 - a. may advance court costs and expenses of litigation, the repayment of which shall ultimately be the responsibility of the client; and
 - b. representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

6. An attorney shall not accept compensation for representing a client from a person or persons other than the client unless:
 - a. the client consents after consultation;
 - b. there is no interference with the attorney's independence of professional judgment or with the client-attorney relationship; and
 - c. information relating to representation of a client is protected as required by Section 4(F).
7. An attorney 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 consents after consultation, including disclosure of the existence and nature of all claims or pleas involved and of the participation of each person in the settlement.
8. An attorney shall not:
 - a. make an agreement prospectively limiting the attorney's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement; or
 - b. settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection with the claim.
9. Two attorneys who are related to another as parent, child, sibling, or spouse shall not represent clients that are adverse parties in a single action, except upon informed consent of both clients.
10. An attorney shall not acquire a proprietary interest in the cause of action or subject matter of litigation the attorney is conducting for a client, except that the attorney may contract with a client for a reasonable contingent fee in a civil case, as permitted by Section 4(E).

I. Conflict of Interest: Former Client.

1. An attorney 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 consents after consultation.

2. Unless the former client consents after consultation, an attorney shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the attorney formerly was associated has previously represented a client:
 - a. whose interests are materially adverse to that person; and
 - b. about whom the attorney had acquired information protected by Section 4(F) and (I)(3).
3. An attorney 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:
 - a. use information relating to the representation to the disadvantage of the former client, except as Section 4(F) or Section 6(C) would permit or require with respect to a client, or when the information has become generally known; or
 - b. reveal information relating to the representation, except as Section 4(F)(2) or Section 6(C) (1) would permit or require with respect to a client.

J. 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, mental disability or for some other reason, the attorney shall, as far as reasonably possible, maintain a normal client-attorney relationship with the client.
2. An attorney may seek the appointment of a guardian or guardian *ad litem* or take other protective action with respect to a client only when the attorney reasonably believes that the client cannot adequately act in the client's own interest.

K. Safekeeping Property.

1. An attorney, holding property of clients or third persons in connection with legal representation, shall hold that property separate from the attorney's own property. All funds of the client paid to an attorney or law firm, other than advances for costs and expenses, shall be deposited in an interest bearing account in one or more identifiable banks, savings and loan associations, or credit unions maintained in the state in which the law office is situated, and no funds belonging to the attorney or the law firm shall be deposited in the account, except as provided in these *Rules*.

Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the attorney and shall be preserved for a period of five years after termination of the representation.

2. Upon receiving funds or other property in which a client or third person has an interest, an attorney shall promptly notify the client or third person. Except as stated in these *Rules* or otherwise permitted by law or by agreement with the client, an attorney 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.
3. When in the course of representation an attorney is in possession of property in which both the attorney and another person claim interest, the property shall be kept separate by the attorney until there is an accounting and severance of their interest. If a dispute arises concerning their respective interests, the attorney shall keep the portion in dispute separate until the dispute is resolved.

L. Declining or Terminating Representation.

1. Except as stated in subsection (L)(3) below, an attorney shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the:
 - a. representation will result in violation of these *Rules* or Tribal law;
 - b. attorney's physical or mental condition materially impairs the attorney's ability to represent the client; or
 - c. attorney is discharged.
2. Except as stated in subsection (L)(3) below, an attorney 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 attorney's services that the attorney reasonably believes is criminal or fraudulent;
 - b. the client has used the attorney's services to perpetrate a crime or fraud;
 - c. the client insists upon pursuing an objective that the attorney considers repugnant or imprudent;

- d. the client fails substantially to fulfill an obligation to the attorney regarding the attorney's services and has been given reasonable warning that the attorney will withdraw unless the obligation is fulfilled;
 - e. the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client; or
 - f. other good cause for withdrawal exists.
3. When ordered to do so by the Tribal courts, an attorney shall continue representation notwithstanding good cause for terminating the representation.
4. Upon termination of representation, an attorney 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 attorney may retain papers relating to the client to the extent permitted by law.

Section 5. Attorney as Counselor. The following provisions shall apply when an attorney serves in the role of counselor:

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

B. **Intermediary.**

1. An attorney may act as intermediary between clients if the attorney:
- a. consults with each client concerning the implications of the common representation, including the advantages and risks involved and the effect on the client-attorney privileges, and obtains each client's consent to the common representation;
 - b. reasonably believes that the matter can be resolved on terms compatible with each 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

- c. reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the attorney has to any of the clients.
2. While acting as intermediary, the attorney 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.
3. An attorney shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in subsection (B)(2) above is no longer satisfied. Upon withdrawal, the attorney shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

C. Evaluation for Use by Third Persons.

1. An attorney may, for the use of someone other than the client, undertake an evaluation of a matter affecting a client if the:
 - a. attorney reasonably believes that making the evaluation is compatible with other aspects of the attorney's relationship with the client; and
 - b. client consents after consultation.
2. Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is protected by Section 4(F).

Section 6. Attorney as Advocate. The following provisions shall apply when an attorney serves in the role of advocate:

- A. **Meritorious Claims and Contentions.** An attorney shall not bring or defend a proceeding, or assert or controvert an issue in the proceeding, unless there is a basis for doing so that is not frivolous. An attorney may offer a good faith argument for an extension, modification, or reversal of existing law. An attorney 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.** An attorney shall make reasonable efforts to expedite litigation consistent with the interests of the client.

C. Candor Toward the Tribal courts.

1. An attorney shall not knowingly:
 - a. make a false statement of material fact or law to the Tribal courts;
 - b. fail to disclose a material fact to the Tribal courts when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
 - c. fail to disclose to the Tribal courts controlling legal authority in the jurisdiction known to the attorney to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - d. offer evidence that the attorney knows to be false. If an attorney has offered material evidence and comes to know of its falsity, the attorney shall take reasonable remedial measures.
2. The duties stated in subsection (C) (1) above continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Section 4(F).
3. An attorney may refuse to offer evidence that the attorney reasonably believes is false.
4. In an *ex parte* proceeding, an attorney shall inform the Tribal courts of all material facts that are known to the attorney and that will enable the Tribal courts to make an informed decision, whether or not the facts are adverse.

D. Fairness to Opposing Party and Counsel. An attorney 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 the Tribal courts, 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 attorney 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 the:
 - a. person is a relative or an employee or other agent of a client; and
 - b. attorney reasonably believes that the person's interest will not be adversely affected by refraining from giving such information.

E. Impartiality and Decorum of the Tribal courts. An attorney 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 Tribal courts.

F. Trial Publicity. An attorney shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the attorney knows or reasonably should know that it will have substantial likelihood of materially prejudicing an adjudicative proceeding.

G. Attorney as Witness.

1. An attorney shall not act as advocate at a trial in which the attorney is likely to be a necessary witness, except where the:
 - a. testimony relates to an uncontested issue;
 - b. testimony relates to the nature and value of legal services rendered in the case; or
 - c. disqualification of the attorney would work substantial hardship on the client.
2. An attorney may act as advocate in a trial in which another attorney in the attorney's firm is likely to be called as a witness unless precluded from doing so by Section 4(G) or (I).

H. **Special Responsibilities of a Prosecutor.** The prosecutor in a criminal case shall:

1. Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
2. 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. §1302(6);
3. Not seek to obtain from an unrepresented accused a waiver of important pretrial rights;
4. 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 the Tribal courts all non-privileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the Tribal courts; and
5. 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 otherwise be prohibited from making.

Section 7. Transactions with Persons Other Than Client. The following provisions shall apply when an attorney has contact or communicates with persons other than a client.

- A. **Truthfulness in Statements to Others.** In the course of representing a client, an attorney shall not knowingly make a false statement of material fact or law to a third person.
- B. **Communication with a Person Represented by an Attorney.** In representing a client, an attorney shall not communicate about the subject of the representation with a party whom the attorney knows to be represented in the matter by another attorney, unless the attorney has the consent of the other attorney or is authorized by law to do so.
- C. **Dealing with an Unrepresented Person.** In dealing on behalf of a client with a person who is not represented by counsel, an attorney shall not state or imply that the attorney is disinterested. When the attorney knows or reasonably should know that the unrepresented person misunderstands the attorney's role in the

matter, the attorney shall make reasonable efforts to correct the misunderstanding.

- D. **Respect for Rights of Third Person.** In representing a client, an attorney 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.

Section 8. Information About Legal Services.

- A. **Communications Concerning Attorney Services.** An attorney may, on the attorney's behalf, on behalf of a partner or associate, or on behalf of any other attorney affiliated with the attorney or the attorney's firm, use or participate in the use of any form of public communication that is not false, fraudulent, misleading, or deceptive. A communication shall not:

1. Contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading;
2. Be likely to create an unjustified expectation about results the attorney can achieve, or state or imply that the attorney can achieve results by means that violate these *Rules* or other law; or
3. Compare the attorney's services with other attorney's services, unless the comparison can be factually substantiated.

B. **Advertising.**

1. Subject to the provisions of these *Rules*, an attorney may advertise.
2. A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.
3. An attorney shall not give anything of value to a person for recommending the attorney's services, except that an attorney may pay the reasonable cost of advertising or communication permitted by these *Rules*.

C. **Direct Contact with Prospective Clients.**

1. An attorney shall not solicit professional employment from a prospective client with whom the attorney has no family or prior professional relationship when a significant motive for the attorney's doing so is the attorney's pecuniary gain.

2. An attorney shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited if the:
 - a. prospective client has made known to the attorney a desire not to be solicited by the attorney; or
 - b. solicitation involves coercion, duress or harassment.
3. The term “solicit” includes contact in person, by telephone or telefacsimile, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the attorney in a particular matter, but who are so situated that they might in general find such services useful, nor does the term “solicit” include sending truthful and non-deceptive letters to potential clients known to face particular legal problems.

D. Communication of Fields of Practice. An attorney may communicate the fact that the attorney does or does not practice in particular fields of law.

Section 9. Maintaining the Integrity of the Profession.

A. Bar Admission and Disciplinary Matters. An applicant for admission to the tribal bar, or any attorney in connection with a disciplinary matter, shall not:

1. Knowingly make a false statement of material fact; or
2. Fail to disclose a fact necessary to correct a misapprehension known to the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from the Court; except that these *Rules* do not require disclosure of information protected by Section 4(F) of these *Rules*.

B. Judicial and Legal Officials.

1. An attorney shall not make a statement that the attorney knows to be false, or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge, adjudicative officer, or public legal officer, or of a candidate for election or appointment to a judicial or legal office.
2. An attorney who is a candidate for a Pokagon Band judicial office shall comply with the applicable provisions of the Pokagon Band of Potawatomi Indians *Court Rules of Judicial Conduct*.

C. Misconduct. It is professional misconduct for an attorney to:

1. Violate or attempt to violate these *Rules* or knowingly assist or induce another to do so, or do so through acts of another;
2. Engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the Tribal law, where such conduct reflects adversely on the attorney's honesty, trustworthiness, or fairness as an attorney;
3. Engage in conduct that is prejudicial to the administration of justice;
4. State or imply an ability to influence improperly a government agency or official; or
5. Knowingly assist a judge or judicial officer in conduct that is in violation of the Pokagon Band of Potawatomi Indians *Criminal Code* or *Court Rules of Judicial Conduct*.

D. Reporting Professional Misconduct.

1. An attorney having knowledge that another attorney has committed a violation of these *Rules* or Tribal law that raises a substantial question as to that attorney's honesty, trustworthiness, or fairness as an attorney, shall inform the Chief Judge of the Tribal Court in accordance with Section 9(F) of these *Rules*.
2. An attorney having knowledge that a tribal judge has committed a significant violation of the Pokagon Band *Court Rules of Judicial Conduct* or other law that raises a substantial question as to the judge's honesty, trustworthiness or fairness for office, shall inform the Chief Judge of the Tribal Court in accordance with Section 4 of the Pokagon Band *Court Rules of Judicial Conduct*. In the event the Chief Judge is believed to have committed the violation, the attorney shall inform the Associate Judge of the Tribal Court.
3. These *Rules* do not require disclosure of information otherwise protected under Section 4(F) of these *Rules*.

E. Disciplinary Procedure.

1. The Chief Judge of the Tribal Court must review complaints made against an attorney and may discipline the attorney in his or her discretion.
2. A complaint alleging an attorney's unethical or unlawful conduct under these *Rules* must be made in writing and must be signed by the complainant. Each complaint must be filed with the Tribal Court

Administrator who will assign it a complaint number. Upon receipt of such complaint, the Administrator must provide a copy of the complaint to the Chief Judge and serve, either by personal service or by certified or registered mail, return receipt requested, a copy of the complaint on the attorney who is the subject of the complaint.

3. The Chief Judge must make an initial determination based on the complaint whether the conduct alleged is sufficient to warrant discipline. If the conduct alleged is sufficient to warrant discipline, the Chief Judge must proceed with a determination under these *Rules*. If the conduct alleged is insufficient for discipline, the Chief Judge must dismiss the matter, notifying the complainant of the action and the attorney who is the subject of the action.
4. All proceedings before the Chief Judge are confidential, and no information may be published, except:
 - a. upon a written request of the Pokagon Band General Legal Counsel or Pokagon Band Tribal Council in connection with the consideration of the hiring or rehiring of any person who is under consideration for the Tribal Prosecutor/Presenting Officer, the Chief Judge must provide information on any complaints made against the candidate/applicant and the Chief Judge's disposition;
 - b. upon the request of the attorney whose conduct is being investigated that any hearing held may be open to the public;
 - c. the Chief Judge's written decision of reprimand or disciplinary action may be published, in the discretion of the Chief Judge, in the Pokagon Band Tribal newspaper, the *Poke'gnek Yajdanawa*;
 - d. the Chief Judge's written decision suspending or revoking the attorney's admission to practice before the Tribal courts shall be published in the Pokagon Band tribal newspaper, the *Poke'gnek Yajdanawa*; or
 - e. if the Chief Judge orders the suspension or revocation of the attorney's admission to practice before the Tribal courts, such information may be communicated to the disciplinary authorities of any other jurisdiction in which the attorney is admitted.
5. The process to be followed after the filing of a complaint shall be:
 - a. the attorney who is the subject of the complaint must file a written answer to the complaint not more than fourteen (14) calendar days after the date of service of the complaint upon the attorney; and

- b. discovery may be allowed by the Chief Judge.
6. The Chief Judge must hold a hearing. Such hearing must be recorded. The Chief Judge has subpoena power and every witness must be sworn.
- a. The attorney who is the subject of the complaint is entitled to be present at the hearing, to be represented by legal counsel at the attorney's own expense, to introduce evidence, to examine and cross-examine witnesses and to subpoena documents and witnesses.
 - b. The Chief Judge must conduct the hearing in an informal manner so as to do substantial justice and provide a fair hearing, but is not bound by formal rules of evidence, except provisions relating to privileged communications. The sole object of such hearing is to expeditiously determine whether a violation of these *Rules* has been committed.
7. After a hearing, the Chief Judge must decide whether there is clear and convincing evidence that the:
- a. attorney has violated a provision of these *Rules* and that the violation is of such serious nature as to warrant formal disciplinary action;
 - b. attorney has been convicted of a crime the nature of which casts into doubt his or her continued willingness to conform his or her conduct to these *Rules*; or
 - c. attorney is suffering from a disability that materially affects his or her ability to perform his or her duties.
8. The Chief Judge must make findings of fact and conclusions of law. If it is decided that the charges have not been established by clear and convincing evidence, the Chief Judge must dismiss the matter and provide written notice to both the attorney complained against and the complainant. If it is decided that the charges have been established by clear and convincing evidence, the Chief Judge may issue a written reprimand to the attorney, or issue other discipline in his or her discretion. A written decision of a reprimand or other disciplinary action must be sent to both the attorney and the complainant. The Chief Judge has the authority to issue a private or public written reprimand, to order the suspension from practice for a period of time or disbar from practice as the Chief Judge finds appropriate. Any decision to suspend from practice or disbar an attorney shall be published in the *Poke'gnek Yajdanawa*

newspaper. Any public reprimand may be published in the discretion of the Chief Judge.

9. If the Chief Judge is not able to preside over a proceeding, the Chief Justice of the Court of Appeals or his or her designee shall perform the duties of the Chief Judge under this Section.

F. **Suspension and Disbarment by Other Jurisdictions.** When an attorney admitted to practice in this jurisdiction is suspended or disbarred by another jurisdiction within the United States, such suspension or disbarment may be considered under principles of comity for reciprocal discipline by the Chief Judge.

Section 10. Public Service.

A. **Pro Bono Public Service.** An attorney should render public interest legal service. An attorney may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. An attorney may also discharge this responsibility by service in activities for improving tribal law, the tribal judicial system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

B. **Accepting Appointments.** An attorney shall not seek to avoid appointment by the Tribal courts to represent a person, except for good cause, such as:

1. Representing the client is likely to result in violation of these *Rules* or other law;
2. Representing the client is likely to result in an unreasonable financial burden on the attorney; or
3. The client or the cause is so repugnant to the attorney as to be likely to impair the client-attorney relationship or the attorney's ability to represent the client.

C. **Legal Services Organizations.** An attorney may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the attorney practices, notwithstanding that the organization serves persons having interests adverse to a client of the attorney. The attorney shall not knowingly participate in a decision or action of the organization 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 attorney.

D. **Law Reform Activities Affecting Client Interest.** An attorney may serve as a director, officer, or member of an organization involved in reform of the law or

administration of the law notwithstanding that the reform may affect the interests of a client of the attorney. When the attorney knows that the interests of a client may be materially benefited by a decision in which the attorney participates, the attorney shall disclose that fact, but need not identify the client.

Section 11. Short Title, Effective Date, Citation Format and Certificate of Adoption.

- A. **Short Title.** These *Rules* are “Rules of Professional Conduct.”
- B. **Effective Date.** These *Rules* become effective when adopted by the members of the Court of Appeals of the Pokagon Band of Potawatomi Indians.
- C. **Citation.** The official abbreviated citation form to these *Rules* is: PBCR Chapter 11.
- D. **Certificate of Adoption.** The Justices of the Court of Appeals unanimously adopted the above *Rules* on August 29, 2012.

JUDICIAL HISTORY

On August 29, 2012: The *Court Rules of Professional Conduct for Attorneys* were unanimously adopted by the Justices of the Court of Appeals.