

Washoe Tribe of Nevada and California

Law & Order Code

TRIBAL COURT RULES

[Last Amended: 9/11/2009; Current Through 2/25/2010]

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Washoe Tribe of Nevada and California

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TRIBAL COURT RULES

[Last Amended: 9/11/2009; Current Through 2/25/2010]

Rule 1 Applicability and Citation of the Rules

These Rules shall be known and may be cited as the Washoe Tribal Court Rules (“WTCR” or “Court Rules”). These Court Rules are intended to supplement the WTLOC. In any conflict between these Rules and the WTLOC, the WTLOC governs.

1. In order to allow flexibility in the administration of the Washoe Tribal Court there may be issued, in addition to these Court Rules, a Standing Order Supplementing Local Rules (“Standing Order”). The Standing Order shall be kept on file in the Court Clerk’s office. Suggested pleading forms prepared by the Court shall also be available in the Court Clerk’s office. The Court Clerk shall provide a copy of the Standing Order and any suggested pleading forms to any patron of the Tribal Court for a fee, unless a fee waiver is granted.
2. The Tribal Judge who will try the case, upon motion of a party, may determine that a case should not follow regular procedure and the Judge may then make such orders as deemed advisable for all subsequent proceedings so long as the ends of justice are achieved.
3. The Court Rules promulgated by the United States District Court for the District of Nevada may be applied whenever not inconsistent with these local rules. To the extent that these local Rules are inconsistent with the Rules promulgated by the United States District Court for the District of Nevada, these local Rules shall be applied instead of the United States District Court for the District of Nevada.

Rule 2 Organization of the Court

1. The Washoe Tribal Court Judges shall be those persons described in Title 1, Section 1-40, *et seq.*
2. In addition to the qualifications required for judges set forth in Title 1, Section 1-40-020, no person who serves as an Associate Judge of the Washoe Tribal Court shall represent clients before the Washoe Tribal Court as an Attorney, Tribal Advocate, or any other type of representative during the period of their appointment.
3. Unless previously disqualified, the Judges of this Court may discuss cases with each other. In the event of the absence or the incapacity of a Judge, or

when agreed by the Judges, a Judge may act without specific assignment of the action to him or her. Cases heard by a Judge pursuant to this paragraph remain assigned to the Judge originally assigned for all subsequent hearings and are not automatically transferred. Transfer of cases shall occur as set forth in these Rules, or elsewhere in the WTLOC.

4. No person shall sit as Judge in any case before the Washoe Tribal Court in which the Judge has represented any of the parties, without the express written permission of all parties to the case.
5. The Court Clerk Coordinator performs the duties of the Court Clerk in addition to other duties as set forth in the WTLOC and HR Policy. All references in the WTLOC and these Rules to "Court Clerk" refer also to the Court Clerk Coordinator. If there is both a Court Clerk Coordinator and a Court Clerk, then the Court Clerk Coordinator shall supervise the Court Clerk in addition to other duties as set forth in the WTLOC and HR Policy. The Court Clerk Coordinator supervises all other Court staff.
6. All actions will be assigned a court date by the Court Clerk.
7. Cases will not be reassigned to a different judge except upon good cause and order signed by the Chief Judge, or upon disqualification of the assigned Judge or as otherwise provided by Court Rules or Washoe Tribal law.

Rule 3 Early Settlement Conference

1. In civil cases not subject to Court Rule 5, or WTLOC Title 9, section 9-70, *et seq.* (Child Custody and Visitation Cases), there shall be an early settlement conference no less than 1 week prior to trial or within thirty (30) days following the pre-trial hearing.
2. An "early settlement conference" means meeting with an active or retired Tribal Judge or other suitable person assigned by the Chief Judge for the purpose of reaching an early settlement of the entire lawsuit or as many legal and factual issues as possible. The early settlement conference may be conducted before the Judge assigned to try the case. Unless excused, all parties and their attorneys shall be present together with any other person necessary for settlement authority at the early settlement conference. In cases involving matters of custom and tradition, the Court shall appoint an elder of the Washoe Tribe to serve as an Associate Judge and to conduct the early settlement conference.

Rule 4 Law and Motion Calendar

1. Pursuant to a scheduling order issued by the Court, there may be a Law and Motion Calendar scheduled for matters which require less than 10 minutes or as otherwise allowed by the Court. The Law and Motion Calendar shall be set pursuant to the Standing Order as executed by the Court Clerk.

2. Any party who wishes to have a matter placed on the Law and Motion Calendar shall have all necessary documents filed before the matter may be set on the Law and Motion Calendar and no later than 12:00 p.m. on that weekday immediately preceding the Law and Motion Calendar day, excluding Court holidays.
3. Any person or attorney desiring to have a matter heard by the Court at some time other than on the Law and Motion Calendar, or during a regularly scheduled Court day, is instructed to contact the Court Clerk for such calendaring arrangements.

Rule 5 Child Custody and Visitation Cases

1. If any section of this Rule conflicts with any section of the WTLOC, then the WTLOC controls.
2. Whenever a party files a pleading requesting the physical or legal custody of a child, or visitation with a child, or files a response to such a pleading:
 - (a) The filing party shall strictly comply in all cases (including, without limitation, joint petitions for summary divorce, cases resolved by the default of a party or by stipulation of the parties) with the requirements of the WTLOC.
3. Child custody decisions pursuant to the submission of a joint petition for divorce pursuant to the WTLOC and child custody decisions submitted to the Court pursuant to the written stipulation of all parties may be decided without a trial or a hearing unless otherwise required by the Court, but shall comply with the requirements concerning proposed orders. All other child custody decisions (including cases wherein a parent has been found in default pursuant to WTLOC §2-70-020 or who has failed to respond to a motion or petition) may not be decided without a trial or a hearing and the presence of any non-defaulting parent. All disputed child custody cases must be calendared for trial.
4. All disputes concerning child custody or visitation shall be resolved within six months from the filing of the responsive pleading contesting child custody or visitation.
5. A contested child custody case may be set for trial without the completion of a Court ordered Home Study to be conducted by Washoe Tribal Social Services pursuant to WTLOC §9-70-050(i) unless the Court determines that a Home Study must be completed in order to serve the ends of justice in that particular case. The parties contesting custody shall be ordered to pay for the Home Study
6. Home Study definitions and requirements:
 - (a) Home Study:

- (1) "Home Study" means the confidential meeting and assessment of the parties, together with a Court designated social worker, for the purpose of reaching an agreement which provides a child custody and visitation schedule in the best interests of the minor child(ren). The assessment shall include at a minimum an assessment of the physical resources of the parties including the residences of the parties, household circumstances, and any other information of significance in determining the appropriate placement of the child(ren).
 - (2) The social worker cannot be subpoenaed to testify concerning matters discussed during Child Custody Mediation and Home Study without prior Court approval.
 - (3) No agreement may be submitted to the Court or considered binding in a contested matter until all counsel of record have approved said agreement. Where a party is not represented by counsel, the social worker must file a statement with the Court indicating:
 - (a) That an agreement appears to be fair to the parties and in the best interests of the child(ren); or
 - (b) The concerns of the social worker indicating why the agreement may not appear to be fair to the parties and/or in the best interests of the child(ren).
- (b) Child Advocacy Assessment:
- (1) "Child Advocacy Assessment" means an investigation and assessment for the purposes of making a recommendation to the Court concerning a custody/visitation schedule which will be in the best interests of the minor child(ren).
 - (2) A Child Advocate shall interview those persons with knowledge helpful to making a recommendation. All Child Advocacy Assessments shall include, at a minimum, an interview with the parties and the child(ren) or a statement as to why such interviews were not conducted.
 - (3) All Child Advocacy Assessment reports making recommendations must describe the facts relied upon and the reasoning which resulted in the recommendation.
 - (4) All Child Advocacy Assessment reports making recommendations must be filed with the Court and served upon the parties. Prior to the filing of said recommendation, the Child Advocate cannot be deposed or otherwise subject to discovery without prior Court approval. After the filing of said recommendation the Child Advocate may be deposed or otherwise subjected to discovery or be subpoenaed to testify as an

expert witness at the expense of the party requesting the same. The Child Advocate shall be treated as a Court-appointed expert. Any party calling the Child Advocate as a witness shall be, absent further order of the Court, responsible for all fees incurred by the Child Advocate after the filing of the report. The written report of the Child Advocate, together with all the facts relied upon therein, is admissible as evidence and need not be otherwise proven.

- (5) A Child Advocate must be trained as a Court Appointed Special Advocate [CASA].
 - (c) The duties of the social worker and the Child Advocate shall never be served by the same person in the same case.
 - (d) The Court may order, *sua sponte* or upon motion, Social Services intervention and/or Child Advocacy in any child custody or visitation dispute.
 - (e) Absent good cause, any party who refuses to accept the terms and conditions contained within the recommendation and who is subsequently unable to obtain relief substantially better than is contained in the recommendation of the Child Advocate shall be required to pay reasonable attorney fees and costs incurred by the other party following the filing of said recommendation.
7. The Court may order the parties to enter into Child Custody Mediation. All fees for mediation shall be paid by the parties, with each paying 50% of the cost unless otherwise ordered by the Court.
 8. All settlement agreements (including agreements resulting from mediation) and all Child Advocacy recommendations must contain a custody/visitation schedule written in terms easily understood so as to be enforceable and shall be at least as specific as a sample schedule provided by the Court. Said custody/visitation schedule shall specifically describe recommendations regarding:
 - (a) The dates and times of custody and/or visitation;
 - (b) The places where the transfers of custody shall take place; and
 - (c) The transportation responsibilities of the parties concerning said transfers.
 9. Prior to the entry of a final order concerning any child custody dispute, each party may be ordered to attend or complete a parenting course. The purpose of said course is to assist parents in methods of protecting their children from the harmful effects following the separation of their parents. Any party may be released from the required attendance by order of the Court and applications for such release may be made *ex parte*.

Rule 6 Child Support, Spousal Support and Temporary Fees

1. Whenever a party files a pleading requesting child support, that pleading shall indicate whether or not that party is currently receiving public assistance such as welfare or IGA. If so, that party shall serve a file stamped copy of said pleading upon the Child Support Division, or its equivalent, of the appropriate Tribal entity, public entity or County District Attorney's Office having authority to collect child support payments and the chambers of the Court.
2. Whenever a party files a pleading requesting child support arrearages, said party shall file, with the initial pleading, a Child Support Arrearage Payment Schedule showing the date each periodic payment was due and the date each payment was received, to the best of that party's knowledge, and provide copies of any supporting documentation.
3. Whenever a party files a pleading requesting child support, spousal support or temporary attorney fees, and whenever a party files a pleading opposing such a request, all said pleadings shall include:
 - (a) An Affidavit or verification by that party indicating his/her employment and income during the past three (3) years, including that party's present employment and income; and
 - (b) A copy of that party's income tax returns, with attached W2 Forms as filed with the IRS for the past three (3) years.

Rule 7 Reserved.

Rule 8 Setting of Cases for Trial

1. Criminal trials shall be set in a manner consistent with the WTLOC and as prescribed by the Judge assigned to try the case.
2. No civil case may be calendared for trial unless:
 - (a) There has been an Early Settlement Conference as required by Court Rule 3; or
 - (b) There has been compliance with Child Custody Mediation/Child Advocacy as required by Court Rule 5.
3. Whenever a civil case is set for a trial the parties shall have already completed or shall have simultaneously calendared a pretrial settlement conference. The requirement for a pretrial settlement conference is in addition to the requirements for an early settlement conference (see Court Rule 3) or child custody mediation/child advocacy (see Court Rule 5). A pretrial settlement conference means meeting with an active or retired Tribal Court Judge or other suitable person, assigned by the trial Judge, for the purpose of reaching an early settlement of the entire lawsuit or as many legal and factual issues as possible. Unless excused, all parties and their attorneys

shall be present at the pretrial settlement conference together with any other person necessary for settlement authority.

4. Any party wishing to set a civil matter for trial shall first attempt to reach a stipulated calendar date for said trial by contacting all parties together with the Court Clerk for that Judge. Conference calls between the parties and the Court Clerk are encouraged. If the parties can agree to a date for the trial with the Court Clerk, the Court Clerk shall then prepare an order for the Court's signature indicating the date the matter is to be tried, the number of days set aside for the trial of said matter, whether the matter will be tried by a jury or by the Court, whether or not a court reporter has been requested and by whom, and the date and time of the pretrial settlement conference.
5. If a party cannot obtain a stipulated calendar date for setting a civil trial by contacting all the parties and the Court Clerk, then that party may file a Motion to Set Trial and have the matter heard on the Court's Law and Motion Civil Calendar upon giving 10 days' written notice to all parties. Said motion shall contain the following paragraph:

"The undersigned has attempted to reach a stipulated trial date in this matter with the other parties and the Court Clerk and has been unable to do so. Therefore, notice is hereby given that the undersigned shall appear before this Court on the law and motion calendar at ___ p.m./a.m. on ___ the ___ day of __ 20___, for the purpose of having this Court set this matter for trial."

At the hearing on the motion to set trial the Court will hear arguments concerning the setting of the matter for trial and will then enter the appropriate order. At said hearing the Court shall consider awarding attorney fees and costs against any party who has failed to cooperate in calendaring the matter for trial without a hearing or who has unreasonably refused to set a timely date for trial.

6. If a case has been set for trial and is subsequently settled, counsel for the parties shall immediately notify the Court Clerk. File-stamped copies of all settlement agreements in non-criminal cases, and all plea agreements in criminal cases, shall be delivered immediately upon filing to the chambers of the Tribal Court Judge assigned to that department. Failure to immediately notify the Court of a settlement, or the misrepresentation that there has been a settlement when there has not, is a significant violation of these rules and subjects an attorney to possible sanctions.
7. In all civil cases not involving child custody and/or child visitation the parties must cause to be issued an Order Setting Trial Date within 60 days following the pre-trial settlement conference. The trial date contained in said Order Setting Trial Date must be within 12 months from the date of the filing of the last answer. Unless this requirement is waived by the Court, the Court may set the case for trial at its own discretion, or dismiss the case without prejudice.

8. In all civil cases involving child custody and/or child visitation, the parties must cause to be issued an Order Setting Trial Date within 10 days following the filing of the Child Advocate's report or Agreement. The trial date contained in said Order Setting Trial Date must be set as soon as possible and no later than within 6 months from date that any child custody and/or child visitation issues were contested by the filing of any responsive pleading. Unless this requirement is waived by the Court, the Court may set the case for trial at its own discretion, or dismiss the case without prejudice.

Rule 9

Motion Practice

Scope

1. This Rule applies to all motions of a contested nature, for both criminal and non-criminal cases.
2. This Rule does not apply to *ex parte* motions (see Court Rule 10) or to proposed orders stipulated to by all parties (see Court Rule 11).
3. All motions for summary judgment in civil matters must be filed at least 30 days before the first day of trial.
4. Any affidavit filed pursuant to this Rule, in both motions and responsive pleadings, shall contain only factual, evidentiary matters, shall be based upon personal knowledge, shall be made by a person competent to testify, shall have attached to it any supporting documents that are either certified or sworn copies, and shall avoid mere general conclusions or arguments. Affidavits substantially defective in these respects may be stricken, wholly or in part.

The Motion

5. All motions shall contain a brief statement particularly describing the relief sought. The motion shall include, or shall be filed simultaneously with, the following:
 - (a) A memorandum of points and authorities in support of the motion.
 - (b) A notice of motion which shall include one of the following two alternatives:
 - (1) "A hearing on this motion is not requested"; or
 - (2) "A hearing on this motion is requested, it is estimated that ___ hours should be set aside for the hearing on this motion."
 - (c) Proof of service of the motion and all supporting documents.
6. All motions shall be accompanied by affidavits in support of any factual contentions involved in the motion. The absence of affidavits may be construed by the Court as an admission that there is no proof in support of any factual contentions asserted in the motion.

7. The absence of a memorandum of points and authorities may be construed by the Court as an admission that the motion is not meritorious and cause for its denial or as a waiver of all grounds not so supported.

The Opposition

8. Within 10 business days after the service of the motion, the opposing party shall serve and file a written opposition thereto. Each opposition shall contain a brief statement describing the extent to which the relief sought is contested; the opposing party shall particularly delineate which portions of the relief sought in the motion are being contested unless the entire relief sought is contested. The opposition shall include, or shall be filed simultaneously with, the following:
 - (a) A memorandum of points and authorities in opposition to the motion.
 - (b) A notice of opposition which shall include one of the following two alternatives:
 - (1) "A hearing on this motion is not requested" or
 - (2) "A hearing on this motion is requested and a court reporter. is/is not requested. It is estimated that _hours should be set aside for the hearing on this motion."
 - (c) Proof of service of the motion and all supporting documents.
9. All oppositions shall be accompanied by affidavits in support of any factual contentions involved in the motion. The absence of affidavits filed with the opposition may be construed by the Court as an admission that the factual contentions supported by affidavits filed in support of the motion are true.
10. Failure of the opposing party to timely serve and file a written opposition, together with supporting points and authorities, may be construed by the Court as an admission that the motion is meritorious and as consent to granting the same.
11. The parties may extend the time for filing an opposition, without an order of the Court, upon the filing of a written stipulation.

The Reply

12. The moving party may serve and file reply points and authorities within 5 days after service of the answering points and authorities.
13. Whenever the Court is presented with a motion which is at issue, the Court shall rule on the motion or, in its discretion, order the Court Clerk to set the matter for hearing. If the Court orders that a hearing be set, the Court Clerk shall contact the parties and determine the earliest date when the motion may be heard and whether any party desires the attendance of the court reporter. Following the selection of a date and time for the hearing, the Court Clerk shall prepare an order for the Court indicating the date and time for the hearing, and the length of time set aside for the hearing, After the Court has

signed the order setting the motion for hearing, the Court Clerk shall then serve the parties with a copy of said order.

Shortened Time for Filing

14. Upon a finding of good cause by the Court, any motion, opposition, or reply may be filed upon shortened time. The party submitting the motion, opposition or reply so filed shall attach a separate motion requesting the filing be made on shortened time, with an affidavit stating facts constituting good cause for shortening time, and points and authorities referencing this Court Rule and any applicable law. Motions requesting filing of pleadings on shortened time may be made *ex parte*.

Extended Time for Filing

15. Upon a finding of good cause by the Court, any motion, opposition or reply may be filed later than required under the WTLOC or these Rules. The party submitting the motion, opposition or reply so filed shall attach a motion requesting the filing be made late, with an affidavit stating facts constituting good cause for the late filing, and points and authorities referencing this Court Rule and any applicable law.

Rule 10

***Ex parte* Orders**

1. After the filing of any domestic relations action, *ex parte* orders mutually restraining the parties from physical violence, harassment, the emotional alienation of a child from a parent, the interference with employment, or the dissipation or waste of any community property will be freely granted in orders provided by the Court. Except for an *ex parte* motion specifically allowed by these rules, or an *ex parte* motion seeking an order shortening the response time for motions, or an *ex parte* motion for an Order to Show Cause for Contempt, all other *ex parte* orders are disfavored and counsel are encouraged to move with notice as required under the WTLOC and these Court Rules.
2. No proposed *ex parte* order, except an order to allow an indigent to file an action without payment of fees, shall be presented to a Judge for signing before the case has been filed with the Court Clerk, given a case number and assigned to a Judge.
3. No proposed *ex parte* order shall be presented to a Judge, the subject matter of which has been previously presented to another Judge, without fully disclosing all circumstances surrounding the previous review.
4. No proposed *ex parte* order which would affect child custody or visitation shall be presented to a Judge without said order setting the matter for a noticed hearing on the next available Court date that permits adequate notice to the other party.
5. All proposed *ex parte* orders shall contain immediately beneath the Judge's signature line the statement "Submitting counsel has personally read this proposed *ex parte* order and approves the same as being in compliance with

all the requirements concerning the submission of *ex parte* orders under WTLOC and the Washoe Tribal Court Rules." Said statement shall be followed by the dated signature of submitting counsel.

6. Whenever the Court has issued an *ex parte* order, the party obtaining it shall forthwith, and no later than 5 days thereafter, serve upon each party in the case a copy of the order and all papers upon which it was based.

Rule 11 Submission of Proposed Orders

1. This rule applies to all civil court proposed orders, except proposed *ex parte* orders which shall comply with Court Rule 10. It is the purpose of this Rule that all orders submitted to the Court for signature accurately reflect either the instructions of the Court or the request to the Court by all parties to the action. It is also the purpose of this Rule that all counsel of record have an opportunity to review a proposed order prior to its submission. All counsel shall make a good faith effort to agree upon the form of any proposed order in furtherance of this purpose.
2. No proposed order shall be submitted to the Court on an attorney's personalized pleading paper.
3. All orders submitted to the Court for consideration shall, to the extent possible, stand alone without reference to attached documents and shall contain the name of the Judge and "JUDGE OF THE WASHOE TRIBAL COURT" below the signature line.
4. All orders submitted to the Court for consideration shall comply with one of the following requirements.
 - (a) BY STIPULATION OF ALL PARTIES. The proposed order shall contain immediately beneath the Judge's signature line one of the following statements followed by the dated signatures of all counsel of record.
 - (1) "All counsel of record have personally read the proposed"; or
 - (2) "All counsel of record have personally read the proposed order and approve the same as representing the request to the Court by all parties to the action."

OR

- (b) WITHOUT STIPULATION OF ALL PARTIES. The submitting party shall simultaneously file the Proposed Order with a separate pleading entitled "Submission of Proposed Order" which shall include a statement that the submitting attorney(s) have/has personally read the proposed order and approve its submission to the Court together with a description of the efforts to obtain the approval of the remaining parties. A file stamped copy of the "Submission of

Proposed Order” shall be delivered with the proposed order to the Judge’s chambers.

5. All proposed divorce decrees submitted pursuant to the stipulation of the parties, including joint petitions for summary divorce and amended divorce decrees, and all divorce decrees or amended divorce decrees submitted pursuant to the default of a party, shall comply with the foregoing requirements of this rule and shall be submitted directly to the Judge.
6. Whenever an attorney comes into possession of an original order signed by the Court that attorney shall immediately deliver said order to the Court Clerk.

Rule 12

Bar Admission Fees; Appearances; Substitutions; Withdrawal or Dismissal of Attorneys

1. APPEARANCE. Any party who wishes to practice before the Tribal Court must first comply with Court Rule 14 and pay a Bar Membership fee of \$50 (fifty dollars). Upon request, the Clerk of the Court shall provide a copy of the Tribal Code and the Rules of Court to any attorney or lay advocate seeking to appear or appearing before the Tribal Court on behalf of a party, or to any party to a case. A fee shall be charged for providing these items, unless a fee waiver has been granted. When a party has appeared by counsel, that individual cannot thereafter appear on his/her own behalf in the case without the consent of the Court. Counsel who has appeared for any party shall represent that party in the case and shall be recognized by the Court and by all parties as having control of the client’s case until counsel withdraws, another attorney is substituted, an Order of the Court after a hearing addressing a request by a party to no longer be represented by counsel, or until counsel is discharged by the client in writing and filed with the Court Clerk. Said withdrawal, substitution or discharge shall be in accordance with this Court Rule. The Court, in its discretion, may hear a party in open Court although the party is represented by counsel.
 - (a) An appearance fee is owed by a party to a civil case at the time that the party appears for the first time in any civil case, except for appearances for purposes of demurring to a complaint or for purposes of any motion contesting the jurisdiction of the Tribal Court. It is not considered an appearance in a matter if the party responds only to contest jurisdiction or to demur to a complaint. Appearance fees are not charged in criminal matters, nor is the Washoe Tribe Social Services Department charged an appearance fee in juvenile protection matters.
 - (b) Appearance fees are charged only once per case for each party, and are a separate fee from any filing fee for complaints, answers, waivers, appeals, or petitions for relief. Appearance fees are charged to persons representing themselves as well as to attorneys or advocates appearing on behalf of clients. Appearance fees may be charged in addition to filing fees and/or Bar Membership Fees.

2. Counsel in any case may be substituted, allowed to withdraw or dismissed in accordance with this Court Rule:
 - (a) **SUBSTITUTION OF ATTORNEYS/ ADVOCATES.** Any substitution of attorneys or advocates must be approved by written order of the Court. When a new attorney or advocate is to be substituted in place of the attorney or advocate withdrawing, the written consent of both the withdrawing and substituting attorneys or advocates, and the written consent of the client shall be filed with the Court. There shall also be delivered to chambers a proposed order by all parties allowing said substitution (see Court Rule 11) or compliance with the applicable Court Rule seeking the Court's approval. The signature of an attorney or advocate to substitute such attorney or advocate into a case constitutes an express acceptance of all dates then set for trial or hearing, or in any Court order.
 - (b) **WITHDRAWAL BY COUNSEL DURING PENDANCY OF CASE.** Any withdrawal of an attorney or advocate of record in a case must be approved by written order of the Court. Any attorney or advocate desiring to withdraw from a case shall file an affidavit indicating the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, together with all other known addresses and phone numbers where the client might be contacted. When an attorney or advocate wishes to withdraw, there shall also be delivered to chambers a proposed order by all parties, including the client of the withdrawing attorney or advocate, allowing said withdrawal (see Court Rule 11) or compliance with the Motion Practice Rule seeking the Court's approval of said withdrawal (see Court Rule 11). The motion shall address any failure to secure agreement of any of the other parties or client, if agreement has not been secured.
 - (c) **WITHDRAWAL BY COUNSEL WHEN CASE IS COMPLETED.** After judgment or final determination of a case, an attorney or advocate may withdraw without a court order. When an attorney or advocate of record wishes to withdraw following the completion of the case said attorney or advocate shall file a Notice of Withdrawal and serve said document upon all parties or their attorneys or advocates who have appeared in the action. Counsel wishing to withdraw shall include in said Notice of Withdrawal the address, or last known address, at which the client may be served with notice of further proceedings taken in the case. Failure to include the information required by this paragraph nullifies *ab initio* the Notice of Withdrawal and said attorney or advocate remains the attorney of record for all purposes.
 - (d) **DISMISSAL OF COUNSEL BY CLIENT.** Any client wishing to dismiss their attorney or advocate of record in a case must have said

dismissal approved by written order of the Court. Said client shall file a motion and affidavit to have such dismissal approved by the Court, and served upon all parties or their attorneys or advocates who have appeared in the action. Said client shall include in said affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for dismissal is granted, together with all other known addresses and phone numbers where the client might be contacted. The Motion Practice Rule shall then be complied with, unless the matter is heard in Court without the filing of a motion by the client, and after a finding of good cause to hear the matter by the Court. (See Court Rule 9 and Court Rule 12(1)).

3. Any submitted order permitting the substitution, withdrawal or dismissal of any attorney or advocate shall contain the address at which the substituted attorney or advocate or unrepresented party can be served with notice of all further proceedings.
4. Except for good cause shown, no application for the substitution, withdrawal or dismissal of an attorney or advocate shall be granted within 30 days of a trial or within 15 days of a hearing in the case. For purposes of this paragraph, the failure of the client to compensate counsel does not constitute good cause. Substitution, withdrawal or dismissal of an attorney or advocate may not be grounds to delay a trial or other hearing.
5. A Corporation may not appear *in propria persona* or *pro se*.

Rule 13 Filing of Faxed Documents

1. A document may be filed by direct faxing to the Court Clerk's Office.
2. A faxed document, including any signature page, may be filed with the Court Clerk in lieu of the original if:
 - (a) It is presented on plain paper;
 - (b) It is clearly legible in its entirety;
 - (c) It is accompanied by a signed affidavit of authenticity,
 - (d) It otherwise complies with all applicable requirements including the payment of any filing fees, and
 - (e) Original copies may filed with the Court.
3. The party filing a faxed document shall preserve the original until the completion of the case.

[Last Amended 9/11/2009, 291-WTC-2009; Effective Date 9/27/2009]

Rule 14

Code of Ethics for the Washoe Tribal Court

Preamble

It is essential that all who work within the Washoe Tribal Court – the Judge, Prosecutors, Court Clerks and their assistants, and all who practicing before the Washoe Tribal Court observe the highest standards of ethics. Fair, equal access to justice and quality representation is of the highest priority. As such, the Code of Ethics for the Washoe Tribal Court establishes minimum ethical standards of conduct. In accordance with the Washoe Tribal Constitution Article IV, Section I, the Washoe Tribal Council hereby adopts this Code of Ethics for the Washoe Tribal Court.

Introduction

These Rules govern the practice of law in the Washoe Tribal Court with respect to professional conduct of officers of the Court. Washoe Court Judges, Court staff, and attorneys and lay advocates admitted to practice in, or engaging in the practice of law before the Courts of the Washoe Tribe shall be subject to the disciplinary procedures contained herein. These Rules are intended to provide appropriate standards with respect to the practice of law including, but not limited to, relationships with clients, with the general public, with other members of the legal profession, and with the Court and various departments of the Washoe Tribe.

A proceeding brought against individuals bound by these Rules shall be an inquiry to determine the fitness of an officer of the Court to continue in that capacity. The purpose of such proceeding is not punishment, but protection of the public and the courts from those who by their conduct have demonstrated that they are unable, or likely to be unable, to properly discharge their professional duties. Further, these Rules are intended to provide for a just determination of allegations of misconduct. These Rules shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense, delay and inconvenience.

Section I. Definitions. The Following Definitions Shall Apply to these Rules

1. “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.
2. “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.
3. “Firm” or “law firm” denotes a legal counsel or legal counsels in a private firm, legal counsels employed in the legal department of a corporation or other organization and legal counsels employed in legal services organization or for public or tribal agencies.
4. “Fraud” or “fraudulent” denotes conduct having the purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

5. "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
6. "Legal counsel" denotes an attorney, lay advocate or advocate admitted to practice before the Courts of the Washoe Tribe.
7. "Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation.
8. "Reasonable" or "reasonably" when used in relation to conduct by legal counsel denotes the conduct of a reasonably prudent and competent legal counsel.
9. "Reasonable belief" or "reasonably believes" when used in reference to legal counsel denotes that legal counsel believes the matter in question and that the circumstances are such that the belief is reasonable.
10. "Reasonably should know" when used in reference to legal counsel denotes that legal counsel of reasonable prudence and competence would ascertain the matter in question.
11. "Substantial" when used in reference to degree or extent denotes a material of clear and weighty importance.

Section II. Code of Conduct for Attorneys, Lay Advocates and Court Personnel

Rule 1. Admission to Practice

- (a) **Unauthorized Practice.** No person shall undertake legal representation of a matter within the jurisdiction of the Courts of the Washoe Tribe without first being admitted to practice before said Courts. No member of the Washoe Tribal bar shall aid any person or entity in the unauthorized practice of law.
- (b) **Qualifications.**
 - (1) **Attorneys.** A person who is admitted to practice before the highest court of any state of the United States is eligible for admission to practice before the Courts of the Washoe Tribe so long as such attorney:
 - (a) Completes and files, with the applicable fee, an application approved by the Chief Judge of the Washoe Tribal Court;
 - (b) Is in good standing in all jurisdictions in which the attorney is admitted to practice;
 - (c) Certifies that he or she has read and understood these Rules in their entirety;
 - (d) Has not been convicted in any court of a gross misdemeanor in the past year or ever convicted of a felony;

- (e) Earns a passing score on the bar examination; and
 - (f) Appears before the Tribal Court and makes oath to uphold all Washoe Tribal laws, ordinances, Rules of Court and procedures.
- (2) Lay Advocate. A member of a federally recognized tribe, who is not an attorney, may be admitted to practice before the Courts of the Washoe Tribe so long as such tribal member:
- (a) Completes and files an application.
 - (b) Has not been convicted in any court of a felony;
 - (c) Certifies that he or she has read and understood these Rules in their entirety;
 - (d) Earns a passing score on the bar examination administered by the Chief Judge of the Washoe Tribal Court; and
 - (e) Appears before the Tribal Court and makes an oath to uphold all Washoe Tribal laws, ordinances, Rules and procedures.
- (3) Lay Advocate. The Chief Judge of the Tribal Court, in his or her discretion, may admit any other person to appear before the Courts of the Washoe Tribe so long as such person:
- (a) Completes and files, with the applicable fee, an application approved by the Chief Judge of the Washoe Tribal Court;
 - (b) Has not been convicted in any court of a gross misdemeanor in the past year or ever convicted of a felony;
 - (c) Has not been disbarred by any jurisdiction;
 - (d) Is not under suspension from the practice of law by any jurisdiction;
 - (e) Certifies that he or she has read and understood these Rules in their entirety;
 - (f) Earns a passing score on the bar examination administered by the Chief Judge of the Washoe Tribal Court; and
 - (g) Appears before the Tribal Court and makes oath to uphold all Washoe Tribal Laws, ordinances, Rules of Court and procedures.
- (4) Misstatements on Admission. In connection with a person's application for admission to the Tribal bar, such person shall not make any statement which the person knows or should know is false and misleading, nor shall the person fail to disclose any fact or information which the person knows or should know is material to such application.

Rule 2. Relationship Between Legal Counsel and Client

- (A) Competence. Legal Counsel shall:

- (2) Not handle a matter which they know or should know that they are not competent to handle without associating with a competent lawyer to handle it.
 - (3) Undertake a legal matter without preparation adequate in the circumstances; or
 - (4) Neglect a legal matter entrusted to their care.
- (B) Scope of Representation.
- (5) Legal counsel shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. Legal counsel shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, legal counsel shall abide by the client's decision, after consultation with legal counsel, as to a plea to be entered, whether to request a jury trial and whether the client will testify.
 - (6) Legal counsel's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
 - (7) Legal counsel may limit the objectives of the representation if the client consents after consultation.
 - (8) Legal counsel shall not counsel a client to engage, or assist a client, in conduct that legal counsel knows is criminal or fraudulent, but legal counsel 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.
 - (9) When legal counsel knows that a client expects assistance not permitted by this Code of Ethics or other law, legal counsel shall consult with the client regarding the relevant limitations on legal counsel's conduct.

Rule 3. Diligence

Legal counsel shall act with reasonable diligence and promptness in representing a client. Legal Counsel should pursue a matter on behalf of a client and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. Legal Counsel must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. Legal Counsel is not, however, required to press for every advantage that might be realized for a client. Legal Counsel has authority to exercise professional discretion in determining the means by which a matter should be pursued. Legal Counsel's duty to act with

reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

Rule 4. Communication

- (a) Legal counsel shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) Legal counsel shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 5. Confidentiality of Information

- (a) Legal counsel shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are implicitly authorized in order to carry out the representation and except as stated in paragraphs (b), (c), and (d).
- (b) Legal counsel shall reveal such information to the extent legal counsel reasonably believes necessary to prevent the client from committing a criminal act that legal counsel believe is likely to result in death or substantial bodily harm.
- (c) Legal counsel may reveal such information to the extent legal counsel reasonably believes necessary to:
 - (1) Prevent the client from committing a criminal act that legal counsel believes is likely to result in substantial injury to the financial property or interest or property of another;
 - (2) Rectify the consequences of a client's criminal or fraudulent act in the commission of which legal counsel's services had been used.
- (d) Legal counsel may reveal such information to establish a claim or defense on behalf of legal counsel in a controversy between legal counsel and the client, to establish a defense to a criminal charge or civil claim against legal counsel based upon conduct in which the client was involved or to respond to allegation in any proceeding concerning legal counsel's representation of the client.

Rule 6.1 Conflict of Interest: General Rule

- (a) Legal counsel shall not represent a client if the representation of client will be directly adverse to the interests another client, unless:
 - (1) Legal counsel reasonably believes the representations will not adversely affect the relationship with the other client; and
 - (2) Each client consents in writing after consultation.

- (b) Legal counsel shall not represent a client if the representation of that client may be materially limited by legal counsel's responsibilities to another client or to a third person, or by legal counsel's own interests, unless:
 - (1) Legal counsel reasonably believes the representation will not be adversely affected; and
 - (2) The client consents in writing 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.

Rule 6.2 Conflict of Interest: Prohibited Transaction

- (a) Legal counsel shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
 - (1) The transaction and terms on which legal counsel acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client.
 - (2) The client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
 - (3) The client consents in writing thereto.
- (b) Legal counsel shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.
- (c) Legal counsel shall not prepare an instrument giving legal counsel or a person related to legal counsel as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donor.
- (d) Prior to the conclusion of representation of a client, legal counsel shall not make or negotiate an agreement giving legal counsel literary or media rights to a portrayal or account based in substantial part on information relating to the representation.
- (e) Legal counsel shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
 - (1) Legal counsel may advance court costs and expenses of litigation, provided the client remains ultimately responsible for such expenses;
 - (2) Legal counsel representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

- (f) Legal counsel shall not accept compensation for representing a client from one other than the client unless:
 - (1) The client consents in writing after consultation;
 - (2) There is no interference with legal counsel's independence or professional judgment or with the client-legal counsel relationship; and
 - (3) Information relating to representation of a client is protected as required by Rule 5.
- (g) Legal counsel 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 in writing after consultation. Such consultation shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.
- (h) Legal counsel shall not make an agreement prospectively limiting legal counsel's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or 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 therewith.
- (i) Legal counsel that is related to another legal counsel as a parent, child, sibling or spouse shall not represent a client in a matter directly adverse to a person who legal counsel knows is represented by their relation unless their client consents in writing after full consultation.
- (j) Legal counsel shall not acquire a proprietary interest in the cause of action or subject matter of litigation legal counsel is conducting for client, except that legal counsel may:
 - (1) Acquire a lien granted by law to secure legal counsel's fee or expenses; and
 - (2) Contract with a client for a reasonable contingent fee in a civil case.

Rule 7. Client Under Disability

- (A) 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, legal counsel shall, as far as reasonably possible, maintain a normal lawyer client relationship with the client.

- (B) Legal counsel may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer or lay advocate reasonably believes that the client cannot adequately act in the client's own interest.

Rule 8. Declining or Terminating Representation

- (a) Except as stated in paragraph (c), legal counsel shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) The representation will result in violation of this Code of Ethics or other law;
 - (2) Legal counsel's physical or mental condition materially impairs legal counsel's ability to represent the client; or
 - (3) Legal counsel is discharged.
- (b) Except as stated in paragraph (c), legal counsel may withdraw from representing a client if withdrawal can be accomplished without material adverse effect to the interest of the client or if:
 - (1) The client persists in a course of action involving legal counsel's services that legal counsel reasonably believes is criminal or fraudulent;
 - (2) The client has used legal counsel's services to perpetrate a crime or fraud;
 - (3) The client insists upon pursuing an objective that legal counsel considers repugnant or imprudent;
 - (4) The client fails substantially to fulfill an obligation to legal counsel regarding legal counsel's services and has been given reasonable warning that legal counsel will withdraw unless the obligation is fulfilled;
 - (5) The representation will result in an unreasonable financial burden on legal counselor has been rendered unreasonably difficult by the client; or
 - (6) Other good cause for withdrawal exists.
- (c) When ordered to do so by the court, legal counsel shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, legal counsel shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. Legal counsel may retain papers relating to the client to the extent permitted by other law.

Rule 9. Advisor

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

Rule 10. Meritorious Claims and Contentions

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

Rule 11. Expediting Litigation

Legal counsel shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 12. Candor Toward the Court

- (a) Legal counsel shall not knowingly:
- (1) Make a false statement of material fact or law to a court;
 - (2) Fail to disclose a material fact to a court when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
 - (3) Fail to disclose to the court legal authority in the controlling jurisdiction known to legal counsel to be directly adverse to the position of the client if such legal authority is not disclosed by opposing counsel; or
 - (4) Offer evidence that legal counsel knows to be false. If legal counsel has offered material evidence and later comes to know that it is false, legal counsel shall take reasonable remedial measures.
- (b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 5.
- (c) Legal counsel may refuse to offer evidence that legal counsel reasonably believes is false.
- (d) In an *ex parte* proceeding, legal counsel shall inform the court of all material facts known to legal counsel which will enable the court to make an informed decision, whether or not the facts are adverse.

Rule 13. Fairness to Opposing Party and Counsel

Legal counsel shall not:

- (a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. Legal counsel shall not counsel or assist another person to do any such act;
- (b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) Knowingly disobey an obligation under the rules of a court except for an open refusal based on an assertion that no valid obligation exists;
- (d) In pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e) In trial, allude to any matter that legal counsel does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) The person is a relative or an employee or other agent of a client; and
 - (2) Legal counsel reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.
- (g) Present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

Rule 14. Impartiality and Decorum of the Court

Legal counsel shall not:

- (a) Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) Communicate *ex parte* with such a person except as permitted by law; or
- (c) Engage in conduct intended to disrupt the court.

Rule 15. Trial Publicity

- (a) Legal counsel shall not make any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if legal counsel knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.
- (b) A statement referred to in paragraph (a) ordinarily is likely to have the effect of materially prejudicing an adjudicative proceeding when it refers to a matter triable to a jury and the statement relates to:
- (1) The character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
 - (2) In a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
 - (3) The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
 - (4) Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
 - (5) Information legal counsel knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
 - (6) The fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until proven guilty.
- (c) Notwithstanding paragraphs (a) and (b) (1-5), legal counsel involved in the investigation or litigation of a matter may state without elaboration:
- (1) The general nature of the claim or defense;
 - (2) The information contained in a public record;
 - (3) That an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved, and, except when prohibited by law, the identity of the persons involved;
 - (4) The scheduling or result of any step in litigation;
 - (5) A request for assistance in obtaining evidence and information necessary thereto;
 - (6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exist the

likelihood of substantial harm to an individual or to the public interest; and

- (7) In a criminal case:
- (a) Identity, residence, occupation and family status of the accused;
 - (b) If the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (c) The fact, time and place of arrest; and
 - (d) The identity of investigating and arresting officers or agencies and the length of the investigation.

Rule 16. Legal Counsel as Witness

- (a) Legal counsel shall not act as an advocate at a trial in which legal counsel is likely to be a necessary witness except where:
- (1) The testimony relates to an uncontested issue;
 - (2) The testimony relates to the nature and value of legal services rendered in the case; or
 - (3) Disqualification of legal counsel would work substantial hardship on the client.

Rule 17. Special Responsibilities of a Tribal Prosecutor

The Tribal Prosecutor in a criminal case shall:

- (a) Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) Not seek to obtain from an unrepresented individual accused acceptance of a plea until said accused has been advised of the right to representation and important pretrial rights, such as the right to a probable cause determination by the court; and
- (d) Make timely disclosure to the defense of all evidence of information known to the prosecutor that tends to negate the guilt of the accused.

Rule 18. Truthfulness in Statements to Others

In the course of representing a client, legal counsel shall not knowingly:

- (a) Make a false statement of material fact or law to a third person; or

- (b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting in a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 5.

Rule 19. Communication with Person Represented by Counsel

In representing a client, legal counsel shall not communicate about the subject of the representation with a party legal counsel knows to be represented by another legal counsel in the matter, unless legal counsel has the written consent of the other legal counselor or is authorized by law to do so.

Rule 20. Interactions with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a legal counsel shall not state or imply that legal counsel is disinterested. When legal counsel knows or reasonably should know that the unrepresented person misunderstands legal counsel's role in the matter, legal counsel shall make reasonable efforts to correct the misunderstanding.

Rule 21. Respect for the Rights of Third Persons

In representing a client, legal counsel 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.

Rule 22. Communications Concerning Services

Legal counsel shall not make any false or misleading statement about him or herself or about his or her services. A communication is false or misleading if it:

- (a) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) Is likely to create an unjustified expectation about the results legal counsel can achieve, or states or implies that legal counsel can achieve results by means that violate these rules or other law; or
- (c) Compares legal counsel's services with other legal counsel's services, unless the comparison can be factually substantiated.

Rule 23. Advertising

- (a) Legal counsel shall not initiate personal or live telephone contact, including telemarketing contact, with a prospective client for the purpose of obtaining professional employment, except in the following circumstances:

- (1) If the prospective client is a close friend, relative, former client or one whom legal counsel reasonably believes to be a client;
 - (2) Under the auspices of a public or charitable legal services organization; or
 - (3) If the prospective client is a business organization, a not-for-profit organization or governmental body and the lawyer seeks to provide services related to the organization.
- (b) Legal counsel shall not contact, or send a written communication to a prospective client for the purpose of obtaining professional employment if:
- (1) Legal counsel knows or reasonably should know that the physical, emotional or mental health of the person is such that the person could not exercise reasonable judgment in employing legal counsel;
 - (2) It has been made known to legal counsel that the person does not want to receive communications from legal counsel;
 - (3) The communication involves coercion, duress, or harassment; or
 - (4) The written communication concerns a specific matter and legal counsel knows or reasonably should know that the person to whom the communication is directed is represented by other legal counsel in the matter.

Rule 24. Bar Admission and Disciplinary

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

- (a) Knowingly make a false statement of material fact; or
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 5.

Rule 25. Statements

Legal counsel shall not make a statement that legal counsel knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge, peacemaker, adjudicatory officer, or of a candidate for appointment to judicial office.

Rule 26. Reporting Professional Misconduct

- (a) Legal counsel having knowledge that another legal counsel has committed a violation of these Rules that raises a substantial question as to that legal counsel's honesty, trustworthiness or fitness as legal

counsel in other respects, shall inform the Washoe Tribal Council according to the disciplinary process outlined in Section IV.

- (b) Legal counsel having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This Rule does not require disclosure of information otherwise protected by Rule 5.

Rule 27. Misconduct

It is misconduct for legal counsel to:

- (a) Violate or attempt to violate the Code of Ethics for Washoe Tribal Court Rules, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on legal counsel's honesty, trustworthiness or fitness to serve as legal counsel in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice;
- (e) State or imply an ability to influence improperly a government agency or official; or
- (f) Knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Ethics for the Washoe Tribal Court or other law.

Rule 28. Jurisdiction

Legal counsel admitted to practice in this jurisdiction are subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Rule 30. Conviction of Crimes

- (a) Upon notice of a legal counsel's conviction of a crime by any jurisdiction, the Tribal Council shall investigate the circumstances of said conviction. Upon determining that legal counsel has been convicted of a crime demonstrating unfitness to engage in the practice of law, whether the conviction resulted from a plea of guilty or *nolo contendere* or from a verdict after a trial or otherwise, the Council shall, if satisfied that the crime demonstrates unfitness to practice law,

enter a notice for legal council to appear and show cause why she should not be immediately suspended from the practice of law, regardless of the pendency of an appeal of the conviction. Pending final disposition of any disciplinary proceeding affording the legal counsel opportunity to be heard, Council may make such order of suspension as may be advisable in the interest of the Tribal community and/or the public, the Tribal bar and the Court. The Council may, in its discretion, choose to defer the hearing on the order to show cause until all appeals from the conviction are concluded.

- (b) A certificate of final judgment of conviction of a legal counsel for any crime shall be conclusive evidence of the commission of a crime in any disciplinary proceeding based upon the conviction subject to the provisions of paragraph (c) below.
- (c) Legal counsel suspended hereunder will be reinstated immediately upon the filing of a certificate that the underlying conviction for a crime has been reversed or set aside. The reinstatement need not terminate any disciplinary proceeding then pending against legal counsel.
- (d) When legal counsel has been convicted of a crime covered by paragraph (a) in the Washoe Tribal Court, the Clerk of the Court shall transmit a notice thereof to the Tribal Council within 10 days of said conviction.

Section III. Judicial Code of 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.

Rule 31. 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 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 the Judicial Code of Conduct (Rules 31 through 38 inclusive) should be construed and applied to further these objectives.

Rule 32. 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

Rule 33. 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:

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.

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 Court 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 nonprofessional conduct of which the judge may become aware.

Rule 34. 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.

Rule 35. Extra-Judicial Activities.

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.

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.

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.

Rule 36. 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.

Rule 37. 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.

Rule 38. Other Provisions and Interpretation of Rules.

- (a) Nothing contained in these Rules shall be construed to repeal or limit any provisions contained in the Washoe Law and Order Code regarding the conduct of legal counsel and disciplinary measures applicable thereto.
- (b) These Rules shall be read in such a manner as to achieve uniformity in interpretation with applicable Tribal law.

Section IV. Disciplinary Process

- (a) Any claimed violation of the Code of Ethics for the Washoe Tribal Court as set forth herein may be reported in writing to Washoe Tribal Council who shall then investigate the matter.
- (b) Written notice of such complaint shall be provided to legal counsel against whom the complaint is filed. Legal counsel shall have a period of 15 days from the date of the notice within which to respond in writing to the complaint.
- (c) Based on the complaint and written response, the Washoe Tribal Council shall determine whether or not there is probable cause to believe that a violation of Code of Ethics for the Washoe Tribal Court has been committed. Such determination shall be made within 45 days of the date the legal counsel's response is due. Both the complainant and legal counsel shall receive written notice of such determination by the Council.
- (d) When a determination has been made that there is no probable cause that a violation of the Code of Ethics for Washoe Tribal Court has been committed, the matter shall be closed and shall be sealed until further order of the Court.
- (e) When a determination has been made that there is probable cause that a violation of the Code of Ethics has been committed, the Washoe Tribal Council shall conduct a hearing at their next regularly scheduled meeting. The Complainant shall present the case against the legal counsel and legal council shall be given an opportunity to rebut the allegations. The Court shall provide notice of such hearing to all parties to the complaint, setting forth the date, time and place at which the hearing will be conducted. Such hearing shall be closed to the public and subject to the following:
 - (1) Continuances may be granted in the discretion of the Tribal Council for good cause shown;
 - (2) Any motions filed in the matter shall be filed no later than seven days in advance of the date upon which the complaint is to be heard;
 - (3) Any oral or documentary evidence may be received by the Tribal Council as may be consistent with the Washoe Tribal Rules of Evidence, but the Court shall exclude irrelevant, immaterial or unduly repetitious evidence;
 - (4) When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;
 - (5) Documentary evidence may be received in form of copies or excerpts if the original is not readily available. Upon reasonable and timely requests, the parties may be given an opportunity to compare the copy to the original;

- (6) Parties may be represented by legal counsel; and
- (7) Any of the parties or their legal counsel may conduct direct and cross-examination of witnesses.
- (f) After the close of the hearing, the Council shall render a written decision within 30 business days. Upon completion of the hearing and rendering of a decision, the matter shall be deemed conclusively determined.
- (g) The Council shall have the power to take any of the following action with respect to legal counsel determined to have violated the Rules of Legal Counsel Conduct after hearing duly held:
 - (1) Privately reprimand such legal counsel;
 - (2) Publicly reprimand such legal counsel;
 - (3) Impose monetary fines against such legal counsel;
 - (4) Suspend legal counsel from practice before the Courts of the Washoe Tribe for a definite period of time; or
 - (5) Order the disbarment of legal counsel.
- (h) For any violation of these Rules occurring before the Washoe Tribal Court or before the Inter Tribal Court of Appeals, the judge observing such violation may take immediate action concerning such violation and shall then refer such matter to the Washoe Tribal Council in accordance with the procedure set forth herein.
- (i) Except an order of private reprimand, the Washoe Tribal Court shall transmit a certified copy of the order imposing discipline on legal counsel to the disciplinary authority of any other jurisdiction in which the disciplined legal counsel is licensed or authorized to practice.

Section V. Reciprocal Discipline

- (a) Upon the receipt of notice that legal counsel admitted to practice before the Washoe Tribal Court or a judicial officer of the Tribal Court has been subject to discipline in another jurisdiction (including any tribal or federal court or any tribal, state or federal administrative body or agency), the Washoe Tribal Council shall send a copy of the notice to respondent legal council and inform respondent legal council that they have 30 days from the date of service to respond and explain why the imposition of the identical discipline would be unwarranted.
- (b) In the event that the discipline imposed in the other jurisdiction has been stayed, any reciprocal discipline to be imposed by the Washoe Tribal Court may, but need not, be deferred.

- (c) Upon the expiration of 30 days from service of the notice under subsection (a) above, the Council, after reasonable notice and hearing, may enter such order as the evidence warrants and may impose the identical discipline unless the respondent legal counsel established, or the Council concludes, that:
- (1) The procedure provided in the other jurisdiction did not provide reasonable notice or opportunity to be heard;
 - (2) There was significant infirmity of proof establishing the misconduct;
 - (3) Imposition of the same discipline would result in grave injustice; or
 - (4) The misconduct established does not justify discipline under this Code of Ethics.

Section VI. Sovereign Immunity.

Nothing in this Code of Conduct shall be deemed an express or implied waiver of sovereign immunity.

[Last Amended: 5/9/2009; 281-WTC-2009; Effective Date July 12, 2009]