

HCN DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

1. Authority

The Supreme Court has authority to establish disciplinary rules of professional conduct pursuant to the HO-CHUNK NATION JUDICIARY ESTABLISHMENT AND ORGANIZATION ACT, 1 HCC § 1, and Article VII, Section 7 of the CONSTITUTION OF THE HO-CHUNK NATION, which states in part:

Section 7. Powers of the Supreme Court.

(a) The Supreme Court shall have the power to interpret the Constitution and laws of the Ho-Chunk Nation and to make conclusions of law. The Supreme Court shall not have the power to make findings of fact except as provided by enactment of the Legislature.

(b) The Supreme Court shall have the power to establish written rules for the Judiciary, including qualifications to practice before the Ho-Chunk courts, provided such rules are consistent with the laws of the Ho-Chunk Nation.

2. Purpose

a. These rules are set forth by the Ho-Chunk Supreme Court to ensure a full and fair process for consideration of discipline where alleged ethical violations occur in the Ho-Chunk courts.

b. Where necessary to promote fairness and justice to parties, the Supreme Court may look to Ho-Chunk customs and traditions, laws of the Ho-Chunk Nation, and rules for practice in the Ho-Chunk courts for guidance in applying and supplementing these rules.

3. Definitions

a. *Complainant*: Party who files the Professional Responsibility Complaint with the Ho-Chunk Nation Supreme Court.

b. *Conflict of Interest*: Direct personal or financial interest as defined in *Ho-Chunk Nation Judicial Rules of Ethics*, Rule 4-2.

c. *Frivolous*: An alleged ethics violation that is clearly false or lacking sufficient evidence and is made for the purpose of embarrassing or causing harm to the Respondent.

d. *Just Cause*: A demonstration that the Respondent violated the *Ho-Chunk Nation Rules of Professional Responsibility*. A Complainant must demonstrate just cause within a *Professional Responsibility Complaint*.

e. *Malice*: Wrongful, intentional, and lacking just cause or excuse or as a result of ill-will without a factual basis to support the claim.

f. *Professional Responsibility Complaint*: Official form detailing alleged misconduct, submitted with documentary evidence, if any, also referred to as *Complaint*. The *Complaint* must clearly indicate the rule(s) of professional responsibility violated.

g. *Respondent*: Party accused of ethical violation(s) in the *Professional Responsibility Complaint*.

h. *Special Investigator*: Unbiased outside party appointed by the Supreme Court to gather facts related to the *Professional Responsibility Complaint*. The Special Investigator must be a present or former Ho-Chunk Bar member who is a current attorney or a Ho-Chunk attorney, provided that he or she is not employed by the Ho-Chunk Nation in any capacity and does not have a conflict of interest.

i. *Woigixate*: Requiring that all people be treated with respect and compassion, i.e., no one should be treated badly or demeaned because of their situation.¹

4. Scope

a. These rules apply to members of the Ho-Chunk Bar Association and to attorneys admitted pro hac vice. These rules do not apply to: (1) law students; (2) non-attorney guardians ad litem; and (3) non-attorney spokespersons. This Court mandates that all parties to the *Professional Responsibility Complaint* are treated with *woigixate*.

b. These rules shall be liberally construed to secure a just and speedy determination of every *Professional Responsibility Complaint*.

c. These rules should be read and applied in conjunction with the *Ho-Chunk Nation Rules of Civil Procedure*, *Ho-Chunk Nation Rules of Appellate Procedure*, and *Ho-Chunk Nation Rules of Professional Responsibility*.

5. Filing a Complaint

a. The Complainant shall file a *Professional Responsibility Complaint* in the Ho-Chunk Nation Supreme Court. The complaint form can be located from the Ho-Chunk Nation Judiciary website or may be requested in person or in writing from the Supreme Court Clerk.

b. Complaints must clearly detail the nature of the alleged ethical violation(s), including the specific rule(s) violated, and may be accompanied by documentary evidence and a witness list. A need for expedited review must be listed clearly within the *Professional Responsibility Complaint*. Incomplete, vague, or ambiguous complaints may not be considered.

c. The *Professional Responsibility Complaint* must be filed within one (1) year from when Complainant knew or should have known of the alleged ethics violation(s).

¹ See *Daniel Topping v. HCN Grievance Review Bd.*, SU 09-08 (HCN S. Ct., July 1, 2010) at 7.

6. Cause

Just cause is shown by demonstrating the Respondent violated the *Ho-Chunk Nation Rules of Professional Responsibility*. The Complainant must have personal knowledge of the alleged violation.

7. Response from Court

a. Within fifteen (15) days of receipt of the *Professional Responsibility Complaint*, the Chief Justice shall issue a letter to the Complainant acknowledging receipt of the *Complaint* and requesting additional information, if necessary.

b. Within sixty (60) days of receipt of the *Professional Responsibility Complaint*, the Chief Justice shall issue a letter to the Respondent advising the individual that a *Complaint* has been filed and requesting additional information, if any. A copy of the *Complaint* will accompany the letter. The Respondent is permitted twenty (20) days to file a *Response*, if desired.

c. These timelines may be expedited where the interests of justice so require.

8. Investigation

a. The Supreme Court may act as both fact-finder and decision-maker.² However, where fairness or necessity warrant, the Court may appoint a Special Investigator to serve as fact-finder.

b. The Chief Justice will appoint a Special Investigator within thirty (30) days of receipt Respondent's *Response*, or sooner as deemed necessary.

c. Where necessary, the Supreme Court will permit or issue extensions by letter communicated to all parties.

² The constitutional proscription against appellate fact-finding has no direct relevance in the context of a disciplinary proceeding initiated under these rules. HCN CONST., art. VII, § 7(a). Rather, this single prohibitory clause relates solely to the Court's central, albeit limited, role in adjudicating cases and controversies. *Id.* When the Court performs its solemn responsibility set forth below, it acts in furtherance of its secondary authority "to establish written rules for the Judiciary, including qualifications to practice before the Ho-Chunk courts." *Id.* § 7(b). The Legislature has acknowledged this rule-making power as "exclusive." HCN Judiciary Establishment & Org. Act, 1 HCC § 1.5c.

In this respect, the Constitution directly imparts authority unto the Court. By analogy, an equivalent constitutional delegation is absent in the federal construct. The U.S. Congress instead confers rule-making authority upon the Supreme Court. Specifically, "[t]he 17th section of the Judiciary Act . . . empower[s] the Courts . . . to regulate their practice." *Wayman v. Southard*, 23 U.S. 1, 42-43 (1825) (citing Judiciary Act of 1789, ch. 20, § 17, 1 Stat. 73, 83 (current version at 28 U.S.C. § 1652 (2012))). Regardless, the U.S. Supreme Court has always recognized the federal judiciary's ability to independently discipline its bar. *Ex Parte Wall*, 107 U.S. 265, 273 (1883). Chief Justice John Marshall regarded the ability to discipline counsel as an "incidental" power of any court, "necessary" to uphold "the respectability of the profession." *Ex Parte Burr*, 22 U.S. 529, 531 (1824). This Court shall assume a similar role when necessary, and do so pursuant to an explicit, as opposed to an implicit or supplemental, grant of authority. *Cf.* HCN JUDICIAL R. ETHICS, § 4-1(H) ("A tribal court judge or justice should initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge or justice may become aware.").

9. Qualifications of Special Investigator

a. When the Court deems appointment of a Special Investigator as essential, the Special Investigator must possess the following qualifications: 1) a member of good standing in at least one State Bar; 2) not currently employed by the Ho-Chunk Nation in any capacity; and 3) not possess a conflict of interest.

b. The Special Investigator shall gather facts and submit a report within sixty (60) days of appointment. If a hearing is convened, the Special Investigator should attend if requested and be prepared to testify regarding the contents of the report, if necessary.

10. Permissible Evidence

The Federal Rules of Evidence shall govern fact-finding for *Professional Responsibility Complaints* filed under the *Ho-Chunk Nation Disciplinary Rules of Professional Conduct*.

11. Hearing

a. The Court may convene a hearing with the Respondent in its discretion or at the request of the Respondent, unless the Court determines the matter is frivolous. The hearing shall be closed to the public.

b. The Complainant may be requested to testify at the hearing. Failure to participate may result in dismissal of the *Professional Responsibility Complaint*.

12. Removal to Traditional Court

a. The Complainant and Respondent may pursue mediation of the alleged ethical violation(s) in Traditional Court prior to the issuance of a decision by the Supreme Court, so long as the Traditional Court is willing to hear the dispute and both Complainant and Respondent agree. Complainant and Respondent must each submit written notice of an intention to remove the matter to the Traditional Court to the Supreme Court. The Traditional Court must comply with the timelines identified herein.

b. If the Supreme Court deems the ethical violation necessitates action by the Supreme Court, it may continue to undertake investigation and decision-making, *sua sponte*, as well as enforce necessary discipline.

13. Decision

a. A *Decision* shall be communicated to the Respondent within 120 days of the filing of the *Professional Responsibility Complaint* unless a Special Investigator is appointed. When a Special Investigator is appointed, the *Decision* shall be communicated within 120 days of the Special Investigation appointment. Where the interests of justice so require, the Court may extend the deadline to undertake further fact-finding. The extension shall be communicated to Complainant and Respondent by letter.

b. The *Decision* shall be confidential if the *Complaint* is deemed frivolous or if no ethical violation is determined. The *Decision* shall be published where an ethical violation has been determined. If the Respondent receives a public reprimand, suspension, or expulsion,

the *Decision* will not be redacted. If the Respondent receives a private reprimand, the *Decision* shall be redacted. The Supreme Court Clerk shall communicate the *Decision* to the members of the Ho-Chunk Bar by e-mail or letter.

14. Penalty

a. The Supreme Court shall determine by majority vote the disciplinary measures, if any. Measures may include, but are not limited to: sanctions, community service to the Ho-Chunk Nation, private or public reprimand, suspension, or expulsion from the Ho-Chunk Bar.

b. If the Court determines the Complainant submitted the *Complaint* with malice, the Court may issue a fine of \$500.00 to be paid to Respondent by Complainant. Respondent must file a letter with the Ho-Chunk Supreme Court detailing alleged malice prior to issuance of a *Decision*. The Supreme Court may also, *sua sponte*, determine the filing was undertaken in malice.

c. If an ethical violation is determined, the Respondent may be liable for the costs of a Special Investigator and restitution. If the *Professional Responsibility Complaint* is deemed frivolous or filed with malice, the Complainant shall be held liable for the costs of a Special Investigator.

15. Appeal

The *Decision* of the Supreme Court as communicated by the Chief Justice is final and cannot be appealed.