

**IN THE
HO-CHUNK NATION SUPREME COURT**

In Re Amendment of the *Ho-Chunk Nation Judicial Rules of Ethics*

WHEREAS, on November 1, 1994, the Secretary of the Interior approved a successor constitution for the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Tribe;

WHEREAS, the Constitution of the Ho-Chunk Nation, art. VII, § 4 provides that the judicial power of the Ho-Chunk Nation shall be vested in the Judiciary;


WHEREAS, the Constitution of the Ho-Chunk Nation, art. VII, § 7(b) authorizes the Supreme Court of the Ho-Chunk Nation to establish written rules for the Judiciary;

WHEREAS, the Ho-Chunk Nation Judiciary Establishment & Organization Act, 1 HCC § 1.5c specifically directs the Supreme Court to develop and issue rules, which must be made available to the public;

WHEREAS, the Supreme Court initially adopted the Ho-Chunk Nation Judicial Rules of Ethics on January 22, 2000; further revised such rules on December 4, 2015; and now modifies commentary in sections 4-1 and 4-2, which is intended to be equally authoritative as the corresponding rules; and,

WHEREAS, the Judicial Rules of Ethics provide definitive guidance to judicial officers and supplants the Ho-Chunk Nation Code of Ethics Act, pursuant to subsection 1.4d of said legislation, in instances of conflict.

NOW, THEREFORE, BE IT ORDERED AND RESOLVED that the Supreme Court of the Ho-Chunk Nation amends the Judicial Rules of Ethics, which are attached hereto, effective January 17, 2024.



Hon. Todd R. Matha, Chief Justice

Per Curiam

HO-CHUNK NATION
JUDICIAL RULES OF ETHICS

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I. Application

SEC. 1-1 Judges and Justices

This code applies to the following persons; anyone, whether or not a lawyer, who is an officer of the Ho-Chunk Nation tribal judicial system and is performing judicial functions as a judge or justice for the purpose of this code. All judges and justices must comply with this code. All judges and justices also include those whom they may appoint on a part time basis; a temporary basis, such as a pro tempore, or a Traditional Court clan leader.

SEC. 1-2 Part Time Judges

A part time judge or justice is a judge/justice who serves on a continuing or periodic basis, but is permitted by tribal law or custom to devote time to some other profession or occupation. A part time judge or justice is:

- A. Required to comply with this code unless otherwise exempted;
- B. Should not practice law either as a lawyer or an advocate
 - 1. In the tribal court on which he or she serves, and/or
 - 2. In any court subject to the appellate jurisdiction of the tribal court on which he or she serves.
- C. Should not act as a lawyer or advocate in a proceeding in which she or he has served or in any related proceeding.

SEC. 1-3 Pro Tempore Judges or Justices

A judge/justice pro tempore is a person who is appointed to act temporarily as a judge/justice. A temporary judge or justice:

- A. Is required to comply with this code unless otherwise exempted;
- B. Should not appear as a lawyer or advocate in a proceeding in which he or she has served as a judge or justice or in any related proceeding.

II. Honesty and Independence of the Tribal Judiciary

SEC. 2-1 Standard of Conduct

A tribal court judge or justice should uphold the integrity and independence of the tribal judiciary. An independent and honorable tribal judiciary is essential to justice in the tribal community. A tribal court judge or justice should help create and maintain such a judiciary, in accordance with Ho-Chunk Nation customs and

traditions and should observe high standards of conduct toward achieving this goal.

SEC. 2-2 Separation of Power

A. A judge or justice should encourage a separation between the judicial branch and other branches of the tribal government, and should avoid any contact or duty that violates such a separation, pursuant to HCN Constitution, Article III, sections 2 and 3.

B. A judge or justice should not participate in legislative or executive decision making except where such participation is in accordance with the laws and Constitution of the Ho-Chunk Nation.

COMMENT: Judges and justices would be allowed to participate in activities that involve administrative responsibilities for the court such as seeking legislative approval for budget appropriations and modifications. Judges and justices may recommend a pro tempore judge or justice when the Legislature is a party to the proceeding. A judge or justice may participate in legislative or executive decision making when addressing matters that affect personnel issues of court employees.

III. Impropriety and the Appearance of Impropriety

SEC. 3-1 Compliance with Law and Traditions

A tribal court judge or justice should respect and comply with the law and tradition of the Ho-Chunk Nation and should at all times act in a manner that promotes public confidence in the honesty and impartiality of the tribal judiciary.

SEC. 3-2 Judicial Influence

A judge or justice should not allow family, social or other personal relationships to influence his or her judicial conduct. The judge or justice should not attempt to use his or her title or office to advance the private interests of others; nor should he or she convey the impression that anyone has special influence on the judge or justice.

IV. Diligence and Impartiality

SEC. 4-1 Standards

The judicial duties of a tribal judge or justice should take precedence over all other activities. The judicial duties of the judge or justice include all the duties of the office prescribed by tribal law, custom or tradition. In the performance of the duties, the following standards apply:

- A. A tribal court judge or justice should adhere to the laws, customs and traditions of the tribe. He or she should be unswayed by partisan interest, public clamor, political pressure or fear of criticism, and should resist influences on the court by other tribal officials, government officials, or any others attempting to improperly influence the court.
- B. A tribal judge or justice should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, advocates and others with whom he or she deals in his or her official capacity and should require similar conduct of other persons in court proceedings, including court personnel who are subject to the judge/justice's direction and control.
- C. A tribal court judge or justice should give to every person who is legally interested in a proceeding, including his or her representative, a full right to be heard according to tribal law and tradition. A judge or justice should avoid all out-of-court or other communication with tribal officials, agents, or others concerning a pending proceeding unless all parties to the proceeding are present or represented. A judge or justice may, however, obtain the advice of a disinterested expert on federal law, tribal law, custom or tradition or on other sources of law applicable to a proceeding before the court if the request for advice is limited to points of law or tradition and does not involve the particular merits of the case. Ordinarily, the parties should be given a reasonable opportunity to respond to the information provided by the expert.

Comment: The Chief Judge must supervise and support the work of other trial level judges and offer counsel and technical advice to such judges when deemed necessary. However, the Chief Judge should not impose any substantive level of court personnel review, including that of a staff attorney or paralegal, as a precondition to issuance of a judgment, and any cursory procedural review should be expeditiously undertaken. The Chief Judge may require compliance with a uniform citation system, insist upon use of a particular decisional format, and certainly obligate judges to follow appellate case precedent. See HCN Const. art. VII, § 7(c) (confirming finality of Supreme Court decisions). Absent collateral estoppel or res judicata, the independent decisions of judges do not necessarily serve to bind one another, although judges should remain mindful of principles of equal protection. HCN Const. art. X, § 1(a)(8).

- D. A tribal court judge or justice should maintain order in the court. He or she should not interfere in proceedings except where necessary to protect the rights of the parties. A tribal court judge or justice should not assume an advocate role. Similarly, a judge or justice should rely on only those procedures prescribed by the laws and customs of the tribe.

- E. A tribal court judge or justice should dispose promptly of the business of the court.

Comment: Judges and justices should generally receive an equivalent amount of case assignments, while appreciating a presiding judge's enhanced commitment to and involvement with particularized forums. See HCN Judiciary Establishment & Org. Act, 1 HCC § 1.3d-e (identifying the organization of Healing to Wellness and Family Wellness Courts). Judges and justices should enter timely decisions. HCN R. App. P. 16(b); Admin. R. 2005-01 (HCN S. Ct. Apr. 9, 2005).

- F. A tribal court judge or justice should not comment publicly on any proceeding pending in court and should also prohibit other court personnel from making such public comment.

Comment: Judges and justices should uphold the highest levels of confidentiality, diligence and impartiality. Judges and justices should require their court staff to uphold the same high standard. The HCN Employment Relations Act outlines the required general conduct of employees, which the judges and justices should require within the context of the tribal judiciary.

- G. A tribal court judge or justice should diligently perform his or her administrative responsibilities.

Comment: The Chief Judge should ensure the willing assistance of court personnel in order to adequately and timely perform judicial obligations. Court staff, including staff attorney(s) and paralegal(s), should not reasonably withhold support absent a pending and priority assignment, and, if implicated, should dutifully express the reason(s) for temporarily deferring assistance to the requesting judge.

- 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.

Comment: A Professional Responsibility Complaint form should be filed by the judge. See HCN S. Ct. Form 9.

SEC. 4-2 Conflict of Interest/Recusal

- A. A judge or justice shall recuse him/herself in any matter before the court in which he or she has a direct personal or financial interest pursuant to HCN Constitution, Article VII, section 13.

1. Direct Personal Interest is defined as, but not limited to the following:

- (a) An attorney/client relationship where the attorney has represented someone in the same proceeding; or where the relationship is an continuing one;
- (b) The judge or justice has a personal bias or prejudice concerning a party; or personal knowledge of disputed evidentiary facts;
- (c) Cases where the judge or justice's spouse or immediate family is a party to the proceeding, or the spouse is a lawyer or advocate in the proceeding, or the spouse or immediate family member has an interest that could be substantially affected by the outcome of the proceeding or the spouse or immediate family member is likely to be a material witness in the proceeding.

Comment: HCN Code of Ethics defines "immediate family" as a) an individual's spouse; and b) an individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support; and c) any person living in a spousal relationship with another; and d) a son or daughter (including adopted children), brother, sister, mother, father, grandmother, grandfather, grandson or granddaughter."

2. Direct Financial Interest is defined as, but not limited to the following:

- (a) The judge or justice knows that he or she individually has a financial interest in the matter before the court.
- (b) The judge or justice's spouse has a financial interest in the matter before the court.

Comment: A direct financial interest shall be defined as a situation in which the judge or justice or spouse of the judge or justice has a significant financial interest in the outcome of the matter or will directly gain financial benefit from the matter. Such financial interests shall be recent in time.

B. A judge or justice may recuse him/herself on his or her own discretion to avoid the appearance of impropriety;

Comment: The HCN Rules of Appellate Procedure, Rule 4 allows justices to make a discretionary recusal.

During its infancy, the Court (and individual justices) would tend to recuse more often than in recent years due likely to reputational concerns of a fledgling tribunal. The sitting justices now presumptively remain upon appeals that do not pose direct conflicts and - as always - resolve to conscientiously and objectively consider matters brought before the Court.

Krause v. HCN Election Bd. et al., SU 21-03, at 3 n.5 (HCN S. Ct. Feb. 11, 2021). The Traditional Court has long supported this emergent position, stressing the importance of adherence to one's oath of office when confronted with circumstances potentially supportive of a discretionary recusal. In re McArthur, SU 97-07, at 3-4 (HCN S. Ct. Dec. 27, 1997). A justice has a constitutional duty and obligation to preside over an appeal, which must ordinarily supersede comparatively inconsequential concerns relating to appearance. Greencrow v. Ho-Chunk Nation et al., SU 12-04, at 4 (HCN S. Ct. Oct. 5, 2012) (opinion of Matha, J.); cf. HCN Const. art. VII, § 13 (premising legislative pro tempore appointments upon mandatory, not discretionary, recusals).

- C. At the judge or justice's discretion, if there is a fact or issue that may require a disclosure to prevent the appearance of impropriety, then that information must be disclosed to the parties. If the parties do not respond in the form of a Motion for Recusal, there is no basis for the judge or justice to recuse.

Comment: A judge or justice may discern that certain facts or information should be provided to the parties in a case to avoid an appearance of impropriety. Examples are extended family relationships, attorney-client relationships, working relationships and other miscellaneous situations that may raise an appearance of impropriety.

- D. A judge or justice may be recused upon a Motion for Recusal to avoid the appearance of impropriety.

Comment: Judges and justices will need to seriously consider recusals. However, a judge or justice should look to case law and the HCN Constitution in determining whether recusal is warranted. Such factors as remoteness in time, the wishes of the parties and the level of impropriety may be considered in making recusal decisions. In 2012, the Ho-Chunk Nation determined to require Hocq membership as a qualification for the Chief Justice and trial judges to hold elective office. HCN Const. amends. XI-XII. Similarly, associate justices must be enrolled Hocq members by virtue of the existing job description. See HCN Const. art. VII, § 8(b) (requiring that candidates "possess all qualifications . . . by enactment of the Legislature"). Consequently, judges and justices should endeavor to preside over assigned cases, thereby comporting with the legitimate expectation of the tribal community. Cf. Krause v. HCN Election Bd. et al., SU 21-03, at 4 n.7 (HCN S.

Ct. Feb. 18, 2021) (opinion of Matha, J.) (noting constitutional significance of avoiding non-member pro tempore appointments).

V. Improvement of the Legal System

SEC. 5-1 Judicial Involvement

A tribal court judge or justice may engage in the following activities, if in doing so, he or she does not cast doubt on his or her capacity to decide impartially any issue that may come before the court:

- A. The judge or justice may speak, write, lecture, teach and participate in other activities concerning tribal law and custom, the legal system and the administration of justice.
- B. The judge or justice 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, and he or she may otherwise consult with a tribal executive or legislative body or official, but only on matters concerning the general administration of justice.
- C. The judge or justice may serve as a member, officer or director of an organization or tribal government agency devoted to the improvement of the legal system or the administration of justice. The judge or justice may assist such an organization in raising funds and may participate in management and investment. The judge or justice may make recommendations to public and private fund-granting agencies on projects and programs concerning the legal system and the administration of justice.

VI. Extra-Judicial Activities – Regulation

SEC. 6-1 Avocational Activities

A tribal judge or justice may write, lecture, teach and speak on non-legal subjects, and engage in the arts, sports and other social and recreational activities, if these activities do not interfere with the performance of his or her duties.

SEC. 6-2 Civil and Charitable Activities

A tribal judge or justice may participate in civic, charitable and other activities that do not reflect upon his or her impartiality or interfere with the performance of his or her judicial duties. A tribal judge or justice may participate in any educational, religious, charitable or similar organization. A tribal judge or justice should not participate if it is likely that the organization will be involved in

proceedings that would ordinarily come before him or her or will be involved in the adversary proceedings in any tribal court.

SEC. 6-3 Financial Activities

- A. A tribal judge or justice should avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her judicial position or involve him or her in frequent transactions with lawyers or others likely to come before the court on which he or she serves.
- B. A tribal judge or justice may hold and manage investments and engage in other activity for compensation, subject to these rules and other applicable ethics rules of other jurisdictions. Additionally, a part-time judge or justice may engage in the full-time practice of law concurrent to his or her judicial duties.

Comment: A part-time judge or justice who is a licensed attorney may work for a firm that is presently or was previously engaged in a business relationship with the Ho-Chunk Nation provided that he or she appropriately and effectively insulates him or herself from such business while working for the firm. A full-time judge or justice may only engage in the practice of law, including working in a firm, partnership or solo practice, while serving in a judicial capacity for the Ho-Chunk Nation when such practice comports with Sec. 4-1.

- C. Except as allowed by the laws and traditions of the Ho-Chunk Nation, neither a judge or justice nor a member of his or her family residing in the household should accept a gift, bequest, favor or loan from anyone, which would affect or appear to affect his or her impartiality in judicial proceedings.
- D. A judge or justice may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by these rules, including activities that involve writing, lecturing, teaching and speaking, if the source of the payment does not give appear to improperly influence the judge or justice, subject to the following restrictions:
 - 1. Compensation should not exceed a reasonable amount or exceed what a person who is not a judge or justice would receive for the same activity.
 - 2. Expense reimbursement should be limited to the actual costs of travel, food and lodging reasonably incurred by the judge or justice and, where appropriate to the occasion, by his or her spouse or relative. Any additional payment is compensation.

SEC. 6-4 Extra-Judicial Appointments

Unless allowed by Ho-Chunk Nation tribal law or tradition, a judge or justice should not accept appointments to any Ho-Chunk Nation government entity that is concerned with issues of fact or policy on matters other than the improvement of law, the legal system or the administration of justice. However, a judge or justice may represent the Ho-Chunk Nation during ceremonial occasions or in connection with historical, educational or cultural activities.

VIII. Political Activities of Tribal Court Judges/Justices

SEC. 7-1 Political Conduct in General

Unless authorized by Ho-Chunk Nation tribal law or tradition, a judge or justice should not engage in any tribal political activity except on behalf of measures to improve the law, the tribal legal system or the administration of justice.

SEC. 7-2 Campaign Conduct

A candidate, including an incumbent judge or justice for a tribal judicial office that is filled by tribal election:

- A. Should maintain the dignity appropriate to judicial office and should refrain from any political activity that might interfere with the performance of his or her judicial duties. Furthermore, a judge or justice should encourage members of his or her family to adhere to the same standards of political conduct.

Comment: See the definition of "immediate family" under Sec. 4-2 Comment

- B. Should not make pledges or promises of conduct in judicial office other than the faithful and impartial performance of the duties of the office and not announce his or her views on disputed legal or political issues.

- C. Should not actively campaign for another judge or justice in an election.

Comment: Judges and justices are considered to be campaigning if they are involved in a planned express action to elect a candidate. A judge or justice who speaks publicly on behalf of a candidate or publicly endorses a candidate would be violating this rule. Judges and justices who are tribal members may attend election forums and receive election information as a function of their tribal citizenship. If the judge or justice is a candidate, they may participate in speaking and campaigning publicly on their own behalf without being in violation of these rules.

- D. Should maintain a high standard of impartiality while attending tribal forums and area meetings during the campaign process.

Rules of Judicial Ethics: originally adopted Jan. 22, 2000; restated and revised on Dec. 4, 2015; modified on Jan. 17, 2024, by the Ho-Chunk Nation Supreme Court at the Ho-Chunk Nation Court Building, *Wa Ehi Hoci*, in Black River Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.