

TOHONO O'ODHAM RULES OF COURT

Section 16: Code of Ethics for Legal Practitioners Practicing in the Courts of the Tohono O'odham Nation

Rule 1. Competence.

Legal practitioners must provide competent representation to a client. Competent legal representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 2. Scope of Representation.

Legal practitioners must abide by a client's wishes about the goals of legal representation and must consult with the client about the means of pursuing those goals. Legal practitioners should not pursue legal goals without their client's approval, nor should they assist a client in criminal or fraudulent activity.

Rule 3. Diligence.

Legal practitioners must act with reasonable diligence and promptness in representing a client. Unless the client agrees to modify the scope of representation, the legal practitioner must complete all matters undertaken on the client's behalf.

Rule 4. Communication.

Legal practitioners must keep a client well informed and must respond promptly to requests for information. Legal practitioners must fulfill reasonable client requests for information to help the client make decisions about his or her case.

Rule 5. Fees.

- (a) **Reasonableness of Fees.** Legal practitioners' fees must be reasonable. The determination of reasonable fees should include these considerations:
 - (1) the experience and ability of the legal practitioner providing the legal services;
 - (2) the time and skill involved in performing the service; and
 - (3) the usual fees charged in the Tohono O'odham Nation and surrounding communities for similar services.
- (b) **Contingency Fees.** A fee may be contingent on the outcome of the representation. A contingent fee agreement should, however, be in writing and state the method by which it will be calculated. Legal practitioners must not enter into a fee arrangement contingent upon securing a divorce or upon the amount of support or property

settlement. Legal practitioners must not enter into a contingent fee arrangement for the representation of a defendant in a criminal case.

- (c) **Pro Bono Services.** Representation should not be denied people because they cannot pay for legal services. The legal profession encourages provision of legal services at no fee or at a substantially reduced fee.

Rule 6. Confidentiality of Information.

Legal practitioners must not reveal information communicated by a client. A legal practitioner, however, may reveal information to the extent the legal practitioner reasonably believes necessary to prevent a client from committing a criminal act likely to result in death or serious bodily harm. Legal practitioners may also reveal information necessary to defend against allegations in any proceedings about the legal practitioner's representation of a client.

Rule 7. Conflict of Interest.

- (a) Legal practitioners should not represent a client if that representation involves a concurrent conflict of interest and will be adverse to the interests of another client, or if the legal practitioner's own interests conflict with those of a client. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client, a third person, or by a personal interest of the practitioner.

Examples of conflict of interest between a legal practitioner and clients include but are not limited to: representing opposing parties in litigation, representing co-defendants in a single criminal case, and representing a client against a party who is a client in another case, even if the two cases are unrelated.

Examples of conflicts of interest between a legal practitioner and client include but are not limited to: entering into a business transaction with a client, and acquiring a financial interest adverse to the client.

- (b) Legal practitioners who formerly represented a client must not represent another client in a matter in which the current client's interest are adverse to the interests of the former client, unless the former client consents after consultation.
- (c) Legal practitioners must not represent a client in a matter in which that legal practitioner served as a judge, arbitrator, peacemaker, or mediator without the consent of all parties to the proceeding.

Rule 8. Client Under Disability.

When a legal practitioner believes a client is incapable of acting in his or her own best interests, the legal practitioner should seek the appointment of a guardian for the client. Otherwise, the legal practitioner must, to the extent possible, maintain a normal legal practitioner-client relationship with the client.

Rule 9. Safekeeping Property.

A client's property held by a legal practitioner representing a client must be kept separate from the legal practitioner's own property. A legal practitioner must also keep funds in separate accounts.

Rule 10. Declining or Terminating Representation.

- (a) A legal practitioner must terminate representation if a client requests that the legal practitioner engage in illegal or fraudulent conduct or conduct that violates the Code of Ethics.
- (b) A legal practitioner may withdraw from representing a client if withdrawal can be done without adversely affecting the client's interests, or if:
 - (1) the client fails substantially to meet a duty to the legal practitioner regarding the legal practitioner's services and the client has been notified that the legal practitioner will withdraw if the duty is not met;
 - (2) the representation will result in an unreasonable financial burden on the legal practitioner or has been made unreasonably difficult by the client; or
 - (3) other good cause for withdrawal exists.
- (c) When the legal practitioner is representing the client in a court matter, withdrawal is made upon motion to the court. When ordered by a court of the Tohono O'odham Nation to continue representation, legal practitioners must do so despite good cause for terminating the representation. If termination of representation is granted, legal practitioners must take reasonable steps to protect the client's interests. Such steps include giving reasonable notice and time to appoint new counsel, as well as surrendering papers and property to which the client is entitled.

Rule 11. Advice and Meritorious Claims.

When representing a client, a legal practitioner must give candid advice based on his or her best professional judgment. Legal practitioners should not raise or controvert issues without a substantial basis.

Rule 12. Expediting Litigation.

Legal practitioners must make reasonable efforts to expedite litigation consistent with a client's interests. Legal practitioners must not engage in delay tactics designed solely for monetary gain or to frustrate the opposing party's attempt to obtain a legal remedy.

Rule 13. Honesty towards the Courts of the Tohono O'odham Nation.

Legal practitioners must act with honesty toward the courts of the Tohono O'odham Nation. Legal practitioners must not knowingly make false statements to the court or knowingly offer false evidence. Legal practitioners must not fail to disclose significant legal authority directly adverse to his or her client's position.

Rule 14. Fairness to Opposing Party.

Legal practitioners must act fairly to the opposing party. So that fair access to evidence is maintained, legal practitioners must not:

- (a) destroy or conceal evidence, including documents or other materials of possible evidentiary value;
- (b) falsify existing evidence or create new evidence; or
- (c) influence a witness to give false or misleading testimony.

Rule 15. Impartiality and Decorum of the Tohono O'odham Courts.

Legal practitioners must not try to influence a judge or juror sitting on his or her case other than through authorized legal means. Legal practitioners must not privately confer with a judge about any case before that judge. Legal practitioners must not meet with a juror or prospective juror in a case that legal practitioner is handling.

Rule 16. Conduct before the Courts.

Legal practitioners must act with respect and courtesy toward the courts of the Tohono O'odham Nation. This requires that legal practitioners follow rules established by the court for courtroom demeanor and procedure.

Rule 17. Legal Practitioner as Witness.

Legal practitioners must not act as an advocate at a trial in which the legal practitioner is likely to be a necessary witness unless:

- (a) the testimony relates to an uncontested issue;
- (b) the testimony relates to the nature and value of legal services rendered; or

- (c) disqualification of the legal practitioner would substantially burden the client.

Rule 18. Special Duties of a Prosecutor.

It is a prosecutor's duty to make sure a defendant in a criminal case is given justice under all laws, codes, ordinances, resolutions, and rules of the Tohono O'odham Nation. To carry out this responsibility, a prosecutor must:

- (a) not prosecute a charge the prosecutor knows is not supported by probable cause;
- (b) try to ensure the accused has the opportunity to obtain counsel;
- (c) not obtain waivers of important pretrial rights from an accused who is not represented by counsel;
- (d) disclose to the defense all exculpatory evidence and information known to the prosecutor that may negate or mitigate the guilt of the accused; and
- (e) exercise care to prevent other people associated with the prosecutor in a criminal case from talking publicly about the case before trial.

Rule 19. Communication with Person Represented by Counsel.

When representing a client, legal practitioners must not communicate directly with a party in the same proceeding known to be represented by another legal practitioner, unless the other practitioner has given consent.

Rule 20. Communications Concerning Legal Practitioners's Services.

Legal practitioners must not make false or misleading statements about his or her services. A communication is false or misleading if it has a material misrepresentation of fact or law or is likely to create unreasonable expectations about the results that legal practitioner can achieve.

Rule 21. Soliciting Clients.

Legal practitioners must not solicit employment from a prospective client through direct communications. Apart from family members, it is unethical for legal practitioners to contact in person, by phone, or by mail prospective clients to persuade them to accept legal assistance. This does not include mailings to people not known who might ask for legal services. Such mailings may only give general information about legal practitioners' services. Legal practitioners may advertise through public media such as telephone directories, newspapers, and television. Legal practitioners may also request to be added to the Court's list of practitioners accepting clients, which is available on the Court's website.

Section History

Section adopted by Administrative Order of the Court # 01-05 on January 4, 2005. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O’odham Rules of Court on November 1, 2011. Revised by the 2023 Tohono O’odham Rules of Court to amend the Rule Section name and terms to “legal practitioner” instead of legal counsel and attorney. Amended by the 2023 Tohono O’odham Rules of Court. Amended by the 2024 Tohono O’odham Rules of Court.